

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

MICHELE TOURANGEAU,

CIVIL ACTION

Plaintiff

Docket No: 2:20-cv-00012-JAW

-versus-

VOLUME I OF V

NAPPI DISTRIBUTORS,

Defendant

Transcript of Proceedings

Pursuant to notice, the above-entitled matter came on for **Jury Trial** held before **THE HONORABLE JOHN A. WOODCOCK, JR.**, United States District Court Judge, in the United States District Court, Edward T. Gignoux Courthouse, 156 Federal Street, Portland, Maine, on the 27th day of February, 2023, at 8:35 a.m., as follows:

Appearances:

For the Plaintiff: Danielle M. Quinlan, Esquire
Laura H White, Esquire

For the Defendant: John J. Wall, III, Esquire
Laura Maher, Esquire

Tammy L. Martell, RMR, CRR
Official Court Reporter

(Prepared from manual stenography and
computer-aided transcription)

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CHAMBERS CONFERENCES

Page: (None.)

1 (Open court.)

2 THE COURT: Good morning, counsel.

3 MR. WALL: Good morning, Your Honor.

4 MS. MAHER: Good morning, Your Honor.

5 MS. QUINLAN: Good morning, Your Honor.

6 MS. WHITE: Good morning, Your Honor.

7 THE COURT: Ready for the jury?

8 MR. WALL: I just had a couple of preliminary issues,
9 Your Honor.

10 THE COURT: We had this conversation last Friday.

11 MR. WALL: We did, but since then, Your Honor, we
12 tried to confirm what the schedule is going to be for the trial
13 and the plaintiffs have indicated that they're planning on
14 calling witnesses into through Thursday morning, and obviously
15 we just are concerned that we would have an opportunity to
16 present the witnesses that we intend to for our case. So I
17 just wanted to let the Court know that that was an issue and
18 that needs to be resolved before we get too deep into -- into
19 the order of --

20 THE COURT: Well, I -- I expect, Mr. Wall, you'll as
21 usual be succinct in your cross-examination, we'll move the
22 matter right along.

23 MR. WALL: I will certainly do only what is necessary
24 with regard to the cross-examinations, Your Honor. The other
25 question I had was the -- I don't know whether there is any

1 plan for the -- whether there is a storm tomorrow whether or
2 not that may affect the -- the course of the trial.

3 THE COURT: Right. Well, these are hardy Mainers, I
4 expect them to be here.

5 MR. WALL: Understood. If there is going to be a
6 cancellation, there will be some kind of notification to
7 counsel and the jurors as to how to check in on that?

8 THE COURT: I think that's what we usually do, Mr.
9 Wall.

10 MR. WALL: Thank you, Your Honor.

11 THE COURT: Thank you. Are we ready?

12 MS. WHITE: Yes, Your Honor.

13 THE COURT: Would you bring the jury in, please.

14 THE CLERK: All rise, jury entering.

15 (Jury entered. Time noted: 8:37 a.m.)

16 THE COURT: Please be seated. Good morning, ladies
17 and gentlemen.

18 JURY: Good morning.

19 THE COURT: Welcome again to this courthouse on a
20 brisk Maine morning. I appreciate your all being here on time.
21 We have, as you have been told, a schedule here in the court
22 that runs from 8:30 to 2:30, so it's very important that we all
23 start on time, and we'll try and get you out at about 2:30 each
24 day.

25 My name is John Woodcock, and I'll be the judge who is

1 presiding over the course of this trial. What I am first going
2 to do is I am going to ask the clerk to swear the jury in.

3 THE CLERK: Please stand and raise your right hand.

4 Do each of you solemnly swear that you will well and truly
5 try the issue between the parties at the bar according to the
6 laws and the evidence given to you, so help you God?

7 JURY: I do.

8 THE CLERK: Please be seated.

9 THE COURT: I'm going to ask counsel, if they would do
10 so, to introduce themselves and their -- the individuals at
11 counsel table.

12 MS. QUINLAN: Good morning, my name is Danielle
13 Quinlan. I'm one of the attorneys representing the Plaintiff
14 Michele Tourangeau. This is my co-counsel Laura White.

15 MS. WHITE: Hello.

16 MS. QUINLAN: She is also representing Michele.

17 MR. WALL: Good morning, ladies and gentlemen. My
18 name is John Wall, and Laura Maher and I are representing Nappi
19 Distributors in this case. With us at counsel table is
20 Christine Fox, the human resources director at Nappi.

21 THE COURT: So, ladies and gentlemen, what we're going
22 to be doing is in short order I will be giving you some
23 preliminary jury instructions that will help you have something
24 of a roadmap or an outline as to what is going to happen in
25 this case. After that, the plaintiff will present an opening

1 statement; the defendant will be allowed to present an opening
2 statement if they wish to do so; and then the plaintiff will
3 put on her case.

4 Ladies and gentlemen, I'm now going to give what are
5 called preliminary juror instructions.

6 THE REPORTER: Judge.

7 THE COURT: Yes.

8 THE REPORTER: A juror's hand is up.

9 THE COURT: Yes, sir.

10 JUROR: I would like to request some hearing
11 assistance, please.

12 THE COURT: Oh, yes. Thank you for asking for that.
13 We do have that available for you, sir, thank you.

14 Can you hear me now?

15 JUROR: I do.

16 THE COURT: If you -- if you have -- that's sort of a
17 faint confirmation. Can you hear me or are you having
18 difficulty hearing me?

19 JUROR: I got you.

20 THE COURT: Very good, thank you. I'm going to ask my
21 law clerk, who is going into the other room, to get me a final
22 set of preliminary instructions, which she is just about to do.
23 Keep looking, I knew I would find them. Here they are right
24 here.

25 Members of the jury, now that you have been sworn I will

1 give you some preliminary instructions to guide you in your
2 participation in this trial.

3 Thank you, I -- I found them.

4 Duty of the juror. Jury, it will be your duty to find,
5 from the evidence, what the facts are. You and you alone will
6 be the judges of the facts. You will have to then apply to
7 those facts the law as I give it to you. You must follow that
8 law whether you agree with it or not. And nothing I may say or
9 do -- do during the course of this trial is intended to
10 indicate or should be taken by you as indicating what your
11 verdict should be. That is a matter entirely for you to
12 decide.

13 Introduction to this case. This is a civil action brought
14 by Michele Tourangeau against Nappi Distributors. Ms.
15 Tourangeau is represented at this trial, as you've heard, by
16 her attorneys Danielle Quinlan and Laura White. Nappi
17 Distributors is represented by its attorney John Wall and Laura
18 Maher.

19 Ms. Tourangeau claims that Nappi Distributors, one,
20 discriminated against her on the basis of sex and/or pregnancy
21 by paying her less than similarly situated male employees; two,
22 failed to timely pay her for all of the wages that it had
23 agreed to pay her for the work she performed; and, three,
24 retaliated against her for engaging in protected activity.

25 Ms. Tourangeau further claims that because Nappi

1 Distributors failed to pay her for the work performed under an
2 implied contract, Nappi Distributors owes her for expenses
3 which she reasonably believed she would be compensated for or
4 that in withholding the pay for work performed in absence of a
5 contract, Nappi Distributors unjustly benefited from her work.

6 Nappi Distributors denies that it discriminated against
7 Ms. Tourangeau on the basis of sex and/or pregnancy, retaliated
8 against her for engaging in protected activity, or owes her any
9 wages for work performed.

10 Evidence; objections; rulings; and bench conferences. I
11 have mentioned the word evidence. Evidence includes the
12 testimony of witnesses, documents, and other things received as
13 exhibits, and any facts to which the parties have stipulated.
14 In other words, facts to which they have agreed.

15 There are rules of evidence that control what can be
16 received into evidence. When a party asks a question or offers
17 an exhibit into evidence, and the party on the other side
18 thinks it is not permitted under the rules of evidence, that
19 party may object. This simply means that the objecting party
20 is requesting I make a decision on a particular rule of
21 evidence.

22 Then, it may be necessary for me to talk with the parties
23 outside your hearing. Sometimes we do that in court and other
24 times I'll ask you to go to the jury room. Please understand
25 that while you're waiting we are working. The purpose of these

1 conferences is to decide how certain evidence is to be treated
2 under the rules of evidence and to avoid confusion and legal
3 error. We will, of course, do whatever we can to keep to a
4 minimum the number and lengths -- and length of these
5 conferences.

6 The evidence from which you will find the facts will
7 consist of the testimony of witnesses, documents, and other
8 things received into the record as exhibits and any facts that
9 the lawyers agree to or stipulate to or that the Court may
10 instruct you to find.

11 Certain things are not evidence and must not be considered
12 by you, and I will list them for you now.

13 One, statements, arguments, and questions by lawyers are
14 not evidence.

15 Two, objections to questions are not evidence. Lawyers
16 have obligations to their clients to make objections when they
17 believe evidence is being -- that evidence being offered is
18 improper under the rules of evidence, and you should not be
19 influenced by the objection or by the Court's ruling on it. If
20 the objection is sustained, ignore the question. If it is
21 overruled, treat the answer like any other. If you are
22 instructed that some item of evidence is received for a limited
23 purpose only, then you must follow that instruction.

24 Three, testimony that the Court has excluded or told you
25 to disregard is not evidence and must not be considered.

1 Four, anything you may have seen or heard outside the
2 courtroom is not evidence and must be disregarded. You are to
3 decide the case solely on the evidence presented here in the
4 courtroom.

5 Furthermore, a particular item of evidence is sometimes
6 received for a limited purpose only. That is, you can use it
7 only for a particular purpose and not for any other purpose. I
8 will tell you when that occurs and will instruct you with
9 regard to purposes for which the item can and cannot be used.

10 Finally, some of you may have heard the terms direct
11 evidence and circumstantial evidence. Direct evidence is
12 testimony by a witness about what that witness personally saw
13 or heard or did. Circumstantial evidence is indirect evidence,
14 that is, proof of one or more facts from which one can find or
15 infer another fact.

16 You may consider both direct and circumstantial evidence.
17 The law permits you to give equal weight to both. But it is
18 for you to decide how much weight to give any evidence. Ms.
19 Tourangeau is not required to introduce direct evidence to
20 prove her case and she may prove her case entirely or primarily
21 through circumstantial evidence.

22 Credibility of witnesses. In deciding what the facts are,
23 you may have to decide what testimony you believe and what
24 testimony you do not believe. You may believe everything a
25 witness says or only part of it or none of it.

1 In deciding what to believe, you may consider a number of
2 factors including the following: One, the witness's ability to
3 see or hear or know the things to which the witness testifies;
4 two, the quality of the witness's memory; three, the witness's
5 manner while testifying; four, whether the witness has an
6 interest in the outcome of the case or any motive, bias, or
7 prejudice; five, whether the witness is contradicted by
8 anything the witness said or wrote before trial or by other
9 evidence; and, six, how reasonable the witness's testimony is
10 when considered in light of other evidence which you believe to
11 be true.

12 Burden of proof. This is a civil case. Ms. Tourangeau,
13 as the plaintiff, has the burden of proving her case by what is
14 called a preponderance of the evidence. That means the
15 plaintiff has to produce evidence which, considered in light of
16 all the facts, leads you to believe what the plaintiff claims
17 is more likely true than not. To put it differently, if you
18 were to put the plaintiff's and the defendant's evidence on
19 opposite sides of the scale, the plaintiff would have the --
20 have to make the scales tip somewhat on her side. If the
21 plaintiff fails to meet this burden, the verdict must be for
22 the defendant.

23 Nappi Distributors, as the defendant, has the burden of
24 proof regarding its affirmative defenses. To find for Nappi
25 Distributors on any of its affirmative defenses, you must find

1 the facts it has proven are more likely true than not.

2 Those of you who have sat on criminal cases will have
3 heard of proof beyond a reasonable doubt. That requirement
4 does not apply to a civil case and, therefore, you should put
5 it out of your mind.

6 Summary of the applicable law. In this case, as I
7 mentioned, the Plaintiff Michele Tourangeau claims the
8 Defendant Nappi Distributors discriminated against her as a
9 woman employee on the basis of sex and pregnancy by paying her
10 less than similarly situated male employees.

11 She additionally claims, one, that Nappi Distributors
12 retaliated against her for engaging in protected activity; two,
13 that Nappi Distributors failed to timely pay her for all the
14 wages that it had agreed to pay her for the work she performed;
15 three, that by withholding payment for work performed Nappi
16 Distributors owes her for the expenses for which she reasonably
17 believed she would be compensated; and, four, that in
18 withholding payment for work performed Nappi Distributors
19 unjustly benefited from her work. Each of these claims has
20 different legal elements that Ms. Tourangeau must prove to make
21 her case. At the end of trial, I'll give you detailed
22 instructions on the law, and those instructions will control
23 your deliberations and decision.

24 But to help you follow the evidence, I'll now give you a
25 brief summary of the elements which Ms. Tourangeau must prove

1 to make her case on each charge.

2 First, pay discrimination under the Equal Pay Act. To
3 succeed on her pay discrimination claim, Ms. Tourangeau must
4 prove that it is more likely than not that: One, Ms.
5 Tourangeau and at least one male employee have been employed by
6 Nappi Distributors in jobs requiring substantially equal skill,
7 effort, and responsibility; two, the jobs are performed under
8 similar working conditions; and, three, Ms. Tourangeau was paid
9 at a lower wage than the male employee in jobs that require
10 substantially equal skill, effort, and responsibility as Ms.
11 Tourangeau's job and that are performed under similar working
12 conditions.

13 I earlier mentioned that on some matters Nappi
14 Distributors has asserted what is called an affirmative defense
15 on which it, not Ms. Tourangeau, has an affirmative burden of
16 proof. This is one of those instances. In response to Ms.
17 Tourangeau's Equal Pay Act claim, Nappi has asserted that any
18 differences in pay between Ms. Tourangeau and male workers are
19 due to factors other than sex or pregnancy. On these
20 affirmative defenses, Nappi bears the burden of proof to
21 demonstrate its affirmative defenses are more likely true than
22 not.

23 There is no dispute in this case that Ms. Tourangeau and
24 male employees have been employed by Nappi Distributors as wine
25 sales representative. Representatives. That those wine sales

1 representative positions require substantially equal skill,
2 effort, and responsibility, and that the wine sales
3 representatives that cover routes in southern Maine have
4 similar working conditions.

5 Sex and pregnancy discrimination under Title VII and the
6 Maine Human Rights Act. To succeed on her claims of sex and
7 pregnancy discrimination under Title VII and the Maine Human
8 Rights Act, Ms. Tourangeau must prove by a preponderance of the
9 evidence that Nappi Distributors took adverse employment action
10 against her because of her sex and/or pregnancy. Ms.
11 Tourangeau must persuade you, by a preponderance of the
12 evidence, that her sex and/or pregnancy was one of the
13 determining factors that caused Nappi Distributors to deny her
14 the higher pay enjoyed by male employees or that it made a
15 difference in Nappi Distributors' decision-making about her.

16 An adverse employment action is one that, standing alone,
17 actually caused damage, tangible or intangible, to Ms.
18 Tourangeau. An employer takes adverse action against an
19 employee only if it, one, takes something of consequence away
20 from the employee, for example by reducing her salary or taking
21 away significant responsibilities, or, two, fails to give the
22 employee something that is a customary benefit of the
23 employment relationship, for example, by failing to follow a
24 customary practice of considering the employee for promotion
25 after a particular period of service. An adverse action by a

1 supervisor is an action of the employer.

2 Retaliation under the Maine Human Rights Act and the Equal
3 Pay Act. To prevail in an action for retaliation under the
4 Equal Pay Act and the Maine Human Rights Act, Ms. Tourangeau
5 must prove that it is more likely than not that: One, Ms.
6 Tourangeau engaged in a statutorily protected activity; two,
7 Nappi Distributors subjected her to an adverse employment
8 action; and, three, Nappi Distributors took the action as a
9 reprisal for having engaged in protected activity.

10 Violation of Maine's Timely and Full Payment of Wages Law.
11 To prevail in an action for violation of Maine's Timely and
12 Full Payment of Wages Law, Ms. Tourangeau must prove that it is
13 more likely than not, one, that Ms. Tourangeau earned wages
14 according to the terms of her employment; two, that Nappi
15 Distributors failed to pay Ms. Tourangeau wages owed; and,
16 three, the amount of the wages owed that Nappi Distributors
17 failed to pay to Ms. Tourangeau.

18 Quantum meruit. To prevail in an action for quantum
19 meruit, Ms. Tourangeau must prove that it is more likely than
20 not that: One, Ms. Tourangeau provided services or materials
21 to Nappi Distributors; two, at Nappi Distributors' request, or
22 with Nappi Distributors' knowledge and consent; and, three, the
23 circumstances by which Ms. Tourangeau provided the services or
24 materials made it reasonable for Ms. Tourangeau to expect that
25 she would receive compensation.

1 Unjust enrichment. To prevail in an action for unjust
2 enrichment, Ms. Tourangeau must prove that it is more likely
3 than not that: One, Ms. Tourangeau conferred a benefit on
4 Nappi Distributors; two, Nappi Distributors had appreciation or
5 knowledge of the benefit; and, three, Nappi Distributors
6 accepted the benefit under circumstances such that it would be
7 inequitable for it to retain the benefits without paying Ms.
8 Tourangeau for its value.

9 Conduct of the jury. To ensure fairness, you as jurors
10 must obey the following rules:

11 First, you must not consider any information that is not
12 properly before you. Thus, for example, although most people
13 have access to a computer and to the internet, and you may be
14 tempted to consult with the internet, with dictionaries, or
15 other reference materials, you must not use these resources to
16 do independent research on your own in this case. To do so
17 would violate your oath as jurors in which you will recall you
18 promised to base your verdict solely on the evidence and the
19 law. Similarly, do not discuss or publish the fact that you
20 are a juror on any social media such as Facebook or the like,
21 and do not use any social media to look up any of the
22 participants in this trial.

23 Second, do not talk among yourselves about this case or
24 any one involved with it until the end of the case when you go
25 to the jury room to decide on your verdict.

1 Third, do not talk with anyone else about this case, or
2 about anyone who has anything to do with it, until the trial is
3 over and you have been discharged as jurors. Anyone else
4 includes members of your family and your friends. You may tell
5 them you are a juror, but do not tell them anything about the
6 case until after you have been discharged by me.

7 Fourth, do not let anyone talk to you about the case or
8 about anyone who has anything to do with it. If someone should
9 try and talk to you, please report it to me immediately.

10 Fifth, during the trial do not talk or speak with any of
11 the parties, lawyers, or witnesses involved in the case. You
12 should not even pass the time of day with them. It's important
13 not only that you do justice in this case, but that you also
14 give the appearance of doing justice. If a person from one
15 side of the lawsuit sees you talking to a person on the other
16 side, even if it's simply to pass the time of day, an
17 unwarranted and unnecessary suspicion about your fairness may
18 be aroused. If any lawyer, party, or witness does not speak to
19 you when you pass in the hall or ride in the elevator or the
20 like, it is not because they are being rude, it is because they
21 are not supposed to talk or visit with you.

22 Six, do not read any news stories or articles about the
23 case or about anyone involved with it, or listen to any radio
24 or television reports about the case or about anyone involved
25 with it.

1 Seven, if you need to communicate with me for any reason,
2 simply give a signed note to the court security officer to give
3 to me.

4 Eight, do not make up your mind about what the verdict
5 should be until after you've heard all the evidence, until you
6 have heard my instructions on the law, and until you have gone
7 to the jury room to decide the case and you and your fellow
8 jurors have discussed the evidence. Keep an open mind until
9 then.

10 Note taking. I'm going to permit you to take notes in
11 this case, and the courtroom deputy has distributed pens and
12 pads for your use. I want to give you a couple of warnings
13 about taking notes, however. First of all, do not allow your
14 note taking to distract you from listening carefully to the
15 testimony that is being presented. If you would prefer not to
16 take any notes at all but simply to listen, feel free to do so.

17 Remember, not everything you write down is necessarily
18 what was said. Thus, when you return to the jury room to
19 discuss the case, do not assume simply because something
20 appears in someone's notes that it necessarily took place in
21 the court. Instead, it is your collective memory that must
22 control as you deliberate upon the verdict.

23 Please take your notes to the jury room at every recess.
24 Don't leave them here in the courtroom. I will have the
25 courtroom deputy collect them at the end of each day and place

1 them in the vault. They will then be returned to you the next
2 morning. When the case is over, your notes will be destroyed.
3 These steps are in line with my earlier instructions with you
4 that it is important that you not discuss the case with anyone
5 or permit anyone to discuss it with you.

6 Course of the trial. The first step in the trial will be
7 the opening statements. Ms. Tourangeau's attorney's opening
8 statement will tell you about the evidence she intends to put
9 before you so that you will have an idea of what Ms.
10 Tourangeau's case is going to be.

11 The opening statement is not evidence. Its purpose is
12 only to help you understand what the evidence will be and what
13 Ms. Tourangeau will try and prove.

14 After the plaintiff's opening statements, Nappi
15 Distributors' attorneys may choose to make an opening
16 statement. At this point in the trial, no evidence has been
17 offered by either side.

18 Next, Ms. Tourangeau will offer evidence that she says
19 will support her claims against Nappi Distributors. Ms.
20 Tourangeau's evidence in this case will consist of the
21 testimony of witnesses and may include documents and other
22 witness -- exhibits.

23 After Ms. Tourangeau's evidence, Nappi Distributors may
24 present evidence that may consist of the testimony of
25 witnesses, documents, and other exhibits.

1 After you've heard all the evidence on both sides, the
2 plaintiff and the defendant will each be given time for their
3 final arguments. I just told you the opening statements by
4 lawyers are not evidence. The same applies to the closing
5 arguments. They are not evidence either. In their closing
6 arguments, the lawyers for Ms. Tourangeau and Nappi
7 Distributors will attempt to summarize and help you understand
8 the evidence that has been presented.

9 The final part of the trial occurs when I instruct you
10 about the rules of law that you are to use in reaching your
11 verdict. After hearing my instructions, you will leave the
12 courtroom together to make your decisions. Your deliberations
13 will be secret. You will never have to explain your verdict to
14 anyone.

15 Now, before I ask the lawyers to give their opening
16 statements, I am going to ask the gentleman who is sitting
17 closest to me in the first row to serve as the foreperson of
18 the jury. I will describe in my final instructions what your
19 role will be.

20 Is the plaintiff prepared at this time to give the opening
21 statement?

22 MS. QUINLAN: Yes, Your Honor.

23 THE COURT: You may do so.

24 MS. QUINLAN: Tammy, is this -- okay. Good morning,
25 everyone. My name is Danielle Quinlan, and this is my

1 co-counsel Laura White, and the Plaintiff Michele Tourangeau.
2 We represent -- Laura and I both represent Michele. And I know
3 you've already heard that a couple of times now, but it's in
4 the opening statement that I prepared so I'm just going to go
5 with what I have already practiced.

6 I would like to start by acknowledging all of our
7 gratitude for your service today and for the service of the
8 court, the clerks, the court reporter, the marshals. We know
9 that this is a huge imposition on your lives. We've taken you
10 away from your work, your families, and we appreciate you being
11 here today.

12 This opportunity is critical for Michele to have her story
13 heard and for you all to make a decision about a disagreement
14 essentially that she is having about the facts of the case, so
15 thank you for being here today.

16 Opening statements is a chance for the lawyers to kind of
17 give you a sense for what you're going to hear over the next
18 few days. We'll speak to you at the beginning. We'll tell you
19 about what you're going to hear, kind of present the theories
20 of the case and how we view the facts from the perspective of
21 Michele. At the end, we'll have another chance to speak to you
22 after we put on some evidence, taken testimony from some of the
23 witnesses. And Attorneys John Wall and Laura Maher will have
24 the same opportunity.

25 So this case is about excuses, and Nappi has got one for

1 everything. Sometimes their excuses shift and change and grow.
2 And the excuse provided by Nappi Distributors for the
3 differential treatment is no less demonstrative of bias than
4 the discriminatory act itself. They claim that Michele's
5 colleagues are grandfathered into their higher pay rates while
6 she is not.

7 She is the first female sales representative hired at
8 Nappi. That's significant.

9 Grandfathered is a term we've heard many times before, and
10 you're going to hear that term a lot this week. One of the
11 ways that you might have heard it used before is when people
12 talk about older buildings and how they might not be required
13 to have certain public accommodations that are otherwise
14 required by the Americans with Disabilities Act.

15 The term grandfathered itself comes out of the American
16 south where many states enacted laws aimed at preventing
17 African Americans from being able to exercise their right to
18 vote. States enacted voter registration laws that required
19 literacy tests, owning land, and other strategies to kind of
20 create exclusion and restrictions, but because some of these
21 laws would also have the effect of preventing poor white males
22 from having the opportunity to vote they created something
23 called the grandfather clause meaning if your grandfather was
24 able to vote before the Civil War, then you could vote, even if
25 you didn't own land or pass the literacy test.

1 These clauses became known as grandfather clauses, or
2 grandfathering, and essentially the south came up with ways to
3 include those they wanted to while excluding those they didn't
4 with seemingly neutral language.

5 So let's get into what happened to Michele. Michele
6 learned of a position at Nappi Distributors in 2014 after
7 speaking with one of her former colleagues Pam Gallagher. Pam,
8 you know, knew Michele, had worked with her, and said I'll
9 reach out to Nappi Distributors for you.

10 She spoke with the wine director, Paul Carr, on behalf of
11 Michele and said I have this great candidate, I think she would
12 be perfect for your company, you know, explained her
13 experience. And Paul said, well, we have a lot of moving parts
14 and we need to hire women, so have her send me her resume.

15 So after talking to Pam, Michele sent Paul her resume. He
16 called her up, brought her in for an interview. Michele met
17 with Rocky DeVinney, he was the on-premise wine manager, Mike
18 Hale, he was the off-premise wine manager, and Paul Carr, the
19 director of the wine department.

20 It was an interview, so, you know, the typical interview
21 questions. They went over her experience. They really liked
22 her. And they explained to her that there were a number of
23 positions because of a promotion and a retirement kind of
24 creating some changes within the department. They had
25 discussed the potential of a northern route but said, you know,

1 you're not going to be interested in that based on your
2 experience, so let's not even consider it. Then they talked
3 about the southern route.

4 The southern route was the route that was held by Ian
5 Brown. Ian Brown was going to be promoted to the on-premise --
6 on-premise wine manager because Rocky DeVinney was retiring so
7 it created this new position, this new opening at Nappi.

8 Shortly thereafter, Paul Carr brought -- called her up and
9 said, we all loved you, we're so excited to have you come on
10 board, we're happy to offer you the southern sales route. Then
11 he explained to her that all of the sales representatives at
12 the time were paid three percent commission. And he said to
13 her, you know, I think it would make more sense for your route,
14 because it's so seasonal, to pay you two percent commission and
15 then give you a base salary that's representative of that one
16 percent commission so that you don't starve during the winter.

17 Michele's route was in southern Maine, you know, a lot of
18 beach towns, places that didn't stay open year-round. So Ian
19 Brown, being the sales rep that had held the route before, they
20 joked that he often starved during the winters and there was a
21 gas station that he worked at that would give him hot dogs for
22 free because he was literally making no money in the winter.

23 So, you know, Michele heard the explanations and said,
24 yeah, that makes sense, that's fine, seems reasonable. Had
25 some questions about benefits and vacation, that sort of thing,

1 but she was excited to start. She wanted to work for a
2 distributor, that was her goal, and she was happy to join the
3 Nappi company.

4 Now, fast forward to 2019, January of 2019, and Ms.
5 Tourangeau learned that her base salary was going to be
6 completely eliminated gradually over the next year and a half.
7 At first she said, that's fine, I'll just be a straight three
8 percent, no big deal, and they said no, no, no, you won't be
9 three percent, you're just losing your salary. We're talking
10 about one third of her income essentially. And that act is why
11 we're here today.

12 So Ms. Tourangeau's Equal Pay Act sex discrimination claim
13 can be described or summarized by defendant's decision to pay
14 her less than her male counterparts. One of the ways that
15 Nappi accomplished this was through this disparate commission
16 rate. Nappi attempts to excuse this decision to decrease the
17 commission rate for the sales representatives, but none of the
18 facts really add up, and we'll kind of go over that in more
19 detail.

20 And, again, it's just significant that Michele Tourangeau
21 was the first female sales representative hired, and she was
22 hired at a different commission rate, and the line in 2019 for
23 who was grandfathered and who was not was drawn at Michele.

24 You'll also hear about some discriminatory hiring
25 practices. Why did it take until 2015 for there to be a female

1 sales representative at Nappi Distributors? Well, it's because
2 they were doing things that they did not want to hire a woman
3 in that position. They had some unconscious bias, some very
4 conscious bias, and we'll go over what that kind of looked
5 like.

6 Another way, though, that Michele compensated -- that
7 Nappi compensated Michele differently than her male colleagues
8 is in the -- the character of the route that she was provided.
9 First of all, some of the sales representatives had upwards of
10 200 accounts in their route, and they had a route spanning from
11 southern Maine all the way through northern Cumberland County.
12 Not only did they have more routes, but the accounts that they
13 had were higher volume in sales and they lasted year long.

14 A lot of these sales representatives had what are called
15 anchor accounts. Those are the big accounts. They're the ones
16 like your Hannaford, your Market Basket, or, you know, the
17 clubs like BJ's, Sam's Club, where the wine turns over quickly
18 and you can make a lot of commission in those accounts.
19 Michele didn't have one of those.

20 Nappi continues discrimination commission rate disparity
21 between those that are grandfathered and those that are not
22 through -- though phrased in terms of a neutral factor other
23 than sex nevertheless operates to perpetuate the effects of the
24 company's prior illegal practice of not hiring women. Much
25 like how the south utilized the grandfather clauses to exclude

1 African Americans from voting.

2 As you view the evidence that comes in during trial, I
3 want you to ask yourself whether Nappi's excuses are legitimate
4 and nondiscriminatory, whether the evidence supports that they
5 are legitimate and nondiscriminatory, or whether they were
6 trying to exclude Ms. Tourangeau from earning the commission
7 rate that every other man hired before her was paid because she
8 is a woman.

9 I'm just going to take a quick sip of water here, sorry.

10 So as you view the evidence that comes in -- I did that
11 part, sorry.

12 So let's talk about the excuses. The first excuse that
13 Nappi Distributors provided to Michele was that the three
14 percenters were grandfathered with no further explanation as to
15 why they were grandfathered and she was not. It was just the
16 fact, like of course. But what you'll hear is that Nap --
17 Michele always considered herself one of the three percenters
18 because she was hired with the two percent commission and the
19 one percent base salary.

20 The next excuse Nappi provides is that it had made the
21 decision in 2014 to eliminate the three percent commission.
22 But what you won't see, or hear, or find are any documents that
23 state that this decision was made in 2014. You won't see any
24 e-mails. You won't see any memoranda. You won't see any
25 policies reduced to writing.

1 What you will see is that the sales representative that
2 was offered the position before her was offered the position at
3 three percent commission and he turned it down. What you will
4 also see is that another sales representative who was formerly
5 in the northern route, they were paid straight salary. He
6 entered the southern route and he got two-and-a-half percent
7 commission. You'll also hear from an individual named Dan
8 Toolan. He began working at Nappi shortly after Michele as a
9 sales assistant with the understanding that he would eventually
10 move into a sales representative position. He tried to
11 negotiate his pay, he wasn't happy about the two percent
12 commission, and Frank Nappi, the president and owner, told him
13 prove yourself. If you do a good job, you work really hard, we
14 can talk about the three percent commission. That conversation
15 happened in 2016.

16 If the decision had already made -- been made, why
17 wouldn't he have made it clear to Dan Toolan at that time that
18 the two percent -- the three percent commission was off the
19 table?

20 The next excuse provided by Nappi was that they wanted to
21 reduce the overinflated income of the sales representatives.
22 You'll see all of the income that the sales representatives
23 received. Some of the sales representatives made almost
24 \$200,000. Some of the sales representatives made as little as
25 \$40,000. There is a big disparity in the -- the money that

1 they earned at Nappi.

2 What you won't hear, though -- or what you will hear,
3 sorry, is that Frank Nappi didn't think that Michele's
4 compensation was overinflated. He looked at her compensation
5 with the two percent commission, with her salary, with the
6 incentives she earned, and he didn't think it was overinflated,
7 so why was Michele's salary targeted? Why wasn't she entitled
8 or eligible for the three percent commission?

9 The next excuse Nappi provided was that some of the sales
10 representatives' income wasn't in line with the industry
11 standards meaning other sales representatives at other
12 distributors weren't making as much money as the sales reps at
13 Nappi.

14 If that were true, why would Justin Park, the sales
15 representative who was offered Michele Tourangeau's route just
16 prior to her, who was working at Nappi Distributors'
17 competitor --

18 MR. WALL: Your Honor, I just need to object. We're
19 in argument here, Your Honor.

20 THE COURT: Overruled.

21 MS. QUINLAN: Why would Justin Park, a sales
22 representative at Nappi Distributors' competitor, National
23 Distributors, see the route, see the accounts, see the three
24 percent commission offered with that, and turn it down because
25 it wasn't enough to walk away from his job at National?

1 And then the next excuse that Nappi provided was that
2 these sales representatives shouldn't be making so much money
3 because they're almost making as much or more than management.
4 But, again, the sales representatives are the ones going out
5 there making the sales. They're generating the revenue that
6 pays for everything at Nappi Distributors including
7 management's salaries.

8 You're going to hear some testimony about members of
9 management at Nappi that clearly did not want women working as
10 sales representatives simply for the fact that they were women.
11 And this is because they were women and they would eventually
12 get pregnant -- get married, get pregnant, and go out on
13 maternity leave, and that is a burden, too big of a burden for
14 Nappi to deal with.

15 You'll also hear testimony from some other members of
16 management that had sort of an unconscious bias. So maybe not
17 the same disdain or, you know, obvious bias but just kind of
18 held opinions that, you know, maybe women weren't cut out for
19 the job, their priorities might be more at home, or they might
20 not physically be able to perform the duties of the sales
21 representative because you have to lift heavy things and
22 deliver things if there is a missed order, that sort of thing.

23 You're going to hear testimony that showcases this
24 unconscious bias. Both intentional and unintentional acts of
25 discrimination are contributing to the disparate pay and

1 disparate treatment experienced by Michele while at Nappi.

2 But, ladies and gentlemen, this wasn't just a good old
3 boys club. The culture at Nappi is an overtly sexist
4 environment. You're going to hear that the president and owner
5 of the company brought in a stripper to the company and had the
6 women come watch. You're going to hear testimony of overtly
7 sexist e-mails being sent amongst management and employees.
8 You're also going to see e-mails where they joke about women
9 working doing the same job as men but not getting paid the same
10 amount.

11 In addition to the discrimination based on sex, this is
12 also about pregnancy discrimination. Michele Tourangeau
13 experienced adverse actions because of her pregnancy, because
14 of her childbirth, and because of a pregnancy-related medical
15 condition.

16 Ms. Tourangeau went out on maternity leave on April 11th,
17 her daughter was born April 9th, 2016, and she stayed out
18 through June 17th of 2016. Though you'll hear from Nappi
19 management that it lasted much longer, that it was 15 weeks, we
20 think it was more like nine weeks and four days.

21 While out on maternity leave, Mike Hale offered to -- Mike
22 Hale, sorry, was the off-premise wine manager. Mike Hale had a
23 conversation with Michele in preparation for her maternity
24 leave, and he offered to her an incen -- or an opportunity. I
25 think that's how he explained it, an opportunity. He said it

1 would be beneficial for Michele, it would be beneficial for
2 Nappi, and it would be beneficial for her clients at her
3 accounts if while she was out on maternity leave she stayed in
4 the loop, she stayed in communication with her account
5 contacts, she stayed in communication with the sales assistant
6 who was going to be physically going to her accounts while she
7 was out, that she provide guidance and support for the
8 decisions that needed to be made, that she track the incentive
9 programs and place wines based on what the incentive programs
10 were being offered at the time, and if she did this she could
11 get the incentives earned while she was out on maternity leave.

12 Well, shortly before she came back Michele received an
13 e-mail from Mike Hale kind of itemizing the incentives, and at
14 the bottom it says 43 percent and what she would earn from the
15 incentives. And Michele responded back okay, thanks, great
16 information, what does the 43 percent mean, I get the rest when
17 I return? And he said, oh, Christine Fox was supposed to have
18 a conversation with you about that on Friday. So Michele
19 forwarded the e-mail to Christine and said do we need to have a
20 conversation? Like what's going on?

21 So Michele had a conversation with Christine, explained to
22 her the agreement or the arrangement that she had made with
23 Mike Hale about staying in touch and communicating with her
24 accounts, placing orders, tracking the incentives, and, you
25 know, everything that she did while she was on her maternity

1 leave.

2 Ladies and gentlemen, she worked the entire time during
3 her maternity leave. And she explained to Christine that based
4 on this agreement Mike had promised her the incentives. And in
5 response Christine calls Michele a liar. She said you're a
6 liar, he never said that. But you're going to hear from Mike
7 Hale that he did say that. He -- he acknowledges it, he made
8 the agreement. He is now providing another excuse that he just
9 doesn't think Michele did enough while she was out on her
10 maternity leave to earn all of those incentives.

11 Ms. Tourangeau also took a leave of absence in May of
12 2019. She had a urethral sling surgery. And for those of you
13 who don't know what that is, it's to help with incontinence.
14 And so as some of you might be aware, after you have -- give
15 birth to a child you can pee your pants sometimes. You know,
16 it's like one of those embarrassing things but the realities of
17 our world.

18 So she went out on surgery to have that fixed, and while
19 she was out on surgery -- while she was out on that leave
20 recovering from the surgery, again, she stayed in touch with
21 her accounts, she was placing orders. It was May, she had just
22 opened up a bunch of accounts, created menus for them, got a
23 bunch of wine placements, by the glass pours, things that
24 really generate a lot of profit and revenue for Nappi and for
25 her sales for her accounts. However, because the sales --

1 Nappi's excuse -- Nappi decided not to pay her for the
2 commissions for the work that she performed before going out on
3 leave and while she was out on leave because the sale was not
4 complete until the product was delivered and paid for by the
5 client and that happened while she was out of work.

6 Let's -- let's use a different example to see if this
7 really -- this excuse makes sense. If Michele was selling
8 garage doors and she went to a company and they needed some
9 custom garage door to do some really cool things to help them
10 be more efficient, be more profitable. She worked with the
11 client, really learned about their business, what they needed
12 from this new garage door. They agreed to what she
13 recommended, it was a lot of money, you know, she placed the
14 order, and then she goes out on leave. Garage doors take a
15 while to come in and install. So while she is out on leave the
16 garage door is installed and paid for. Under this excuse
17 provided by Nappi, she would not be entitled to that
18 commission. It doesn't make sense.

19 Michele sent an e-mail to her management and to Christine
20 Fox, the HR director, asking what's going to happen? Like
21 I've -- I'm placing a bunch of huge orders, this is a big time
22 for my route in my world, she says, because she has got this
23 seasonal smaller route, and she knows that that's going to be a
24 huge loss of income for her even though she is doing the work,
25 and they tell her you're out, you're not entitled to

1 commission.

2 Ms. Tourangeau also alleges that Nappi retaliated against
3 her. In order to prove a claim for retaliation, as the judge
4 already explained to you, she needs to show that she engaged in
5 protected activity by opposing or complaining of some sort of
6 illegal practice that violates the Maine Human Rights Act or
7 Title VII such as the Equal Pay Act.

8 You're going to hear from Michele -- sorry. We also need
9 to establish that there is some sort of adverse action such as
10 not receiving her pay for the work that she is performing,
11 having her salary taken away, being excluded from incentives,
12 being written up, being excluded from wine dinners where the
13 management team and the sales representatives all got together
14 with the supplier and got to learn a lot of new information
15 that's really useful to sales representatives in their job.

16 You'll also hear about a time when she was told she needed
17 to use her PTO because she was busy for a few hours, and we'll
18 get into that a little bit more. And you have to find out
19 whether or not you think the adverse action was caused by her
20 engaging in that protected activity.

21 So, you're going to hear from Michele that after she
22 didn't receive her incentive pay in 2016 after her maternity
23 leave, she complained to Christine about it. She complained to
24 Mike Hale about it. She thought she should get paid for the
25 work that she did while she was recovering from having a baby.

1 But then in December of 2017 Michele had a meeting with
2 Christine Fox, the director of human resources, and in this
3 meeting Ms. Fox berated Michele to a level that was completely
4 unwarranted. And this was about the condition of her car.
5 There was a little bit of damage that wasn't reported, it was a
6 little messy. Certainly Michele should keep her car cleaner.
7 A lot of sales representatives had dirty cars, too. And
8 certainly Michele should have reported the damage to her
9 vehicle. But she hadn't noticed it and then by the time she
10 did she just kind of forgot about it. It was on the passenger
11 side so you don't see it if you don't walk up to it, and it
12 just kind of slipped her mind.

13 She apologized profusely to Christine and Christine
14 berated her over and over to the point where she broke Michele
15 and Michele started crying. Michele's apologizing, I'm sorry,
16 I'm sorry, and Christine says, I don't think you're sorry at
17 all, and then tells Michele she is being passive aggressive.
18 And Michele was confused, she was sorry. She wanted to get the
19 heck out of that room with Christine because it was an
20 extremely uncomfortable position.

21 The next day she reported that uncomfortable situation to
22 the on-premise and off-premise managers, Ian Brown and Joline
23 Masters, and during the conversation where she is talking about
24 what happened with Christine Ian Brown is listening and he is
25 taking notes, and he looks at her kind of like shocked like,

1 oh, my God, and he even apologized to Michele like I am so
2 sorry that happened to you, that's awful. And then he asked
3 her a question, he said, do you think this has anything to do
4 with your complaining about not getting your pay during your
5 maternity leave? And Michele said, who knows, but, you know, a
6 light kind of went off for her, probably. Ian Brown reported
7 that to Frank Nappi, Jr., Frank Nappi, Jr., apparently had a
8 conversation with Christine, it didn't go any further.

9 In August of 2018 a new wine director came onboard, his
10 name was Matt Watson. The old wine director, Paul Carr,
11 retired in 2017 and there had been a pretty significant period
12 of time where there wasn't a wine director.

13 During one of her meetings with Matt, she discussed her
14 pay with him and how she was paid two percent commission and
15 salary, and it became very obvious to Michele that he had no
16 idea that there were different compensation structures for
17 different sales representatives at the time.

18 Soon thereafter, Matt told -- or Mr. Watson told Michele
19 that Christine was asking questions about her salary, why she
20 was getting a salary, most of our employees don't really get
21 salary. And so Michele explained, you know, I got the two
22 percent plus the one percent salary because of the seasonal
23 nature of my route, and Matt asked to see any documentation she
24 had about it so she forwarded him her copies of the e-mails
25 from Paul Carr and the offer letter, that sort of thing.

1 Then the discussion became less of a there is questions
2 about your salary to we think your salary -- there is going to
3 be a change to your salary. We don't know what it is yet, but
4 we think there is going to be a change. And that started to
5 happen not -- in November, and there was a meeting December 7th
6 where they again said, you know, there is going to be a
7 reduction, we don't -- we haven't made a decision but it's
8 coming.

9 So the earlier conversations have happened in October and
10 November where this kind of idea came to be. So Michele sent
11 them an article, it's called the SevenFifty report. It was a
12 career and salary survey about industry -- industry trends and
13 pay inequities based on gender in the alcohol beverage
14 industry. And in it, it showed that there was like a
15 15 percent difference in pay between males and females in the
16 alcohol beverage industry.

17 Michele sent it over to Matt, said it was an interesting
18 read. He forwarded it over to Christine and said I'll let you
19 know the impetus of this. And on December 10th Michele met
20 with Matt Watson and he said, so, why did you send me this
21 article? She said, well, you're talking about reducing my
22 salary, I don't know what it's going to look like, but there
23 are these pay inequities, it seemed like an interesting read, I
24 thought you should look at it before you make any final
25 decision. And he said to her, are you trying to play the girl

1 card right now because she -- and he pointed behind her to
2 Christine Fox's office -- she is not going to have any of that.

3 Fast forward to January 22, 2019, and the decision had
4 been made her salary would be completely eliminated over
5 one-and-a-half years, so gradually, and she would not get three
6 percent, and they made the statement there is no gender pay gap
7 at Nappi Distributors.

8 In March of 2019 Michele informed Nappi Distributors that
9 she intended to file a complaint of discrimination based on sex
10 discrimination with the Maine Human Rights Commission. She
11 then filed the complaint of discrimination with the Maine Human
12 Rights Commission in April of 2019.

13 This filing is significant because it directly precedes
14 Michele's unpaid commissions for the work that she performed
15 during that May 2019 leave of absence. In the temporal
16 proximity, that's important. So it happened very close in time
17 to the point where she had filed this complaint with the Maine
18 Human Rights Commission.

19 And one of the justification -- or not justifications, but
20 after explaining their excuse for why they weren't going to pay
21 Michele these commissions, and that it was within their policy
22 and happened to everybody, although you'll hear from management
23 that other sales representatives would receive their
24 commissions while they were out, Nappi absorbed the commissions
25 from the sales that she generated during that time.

1 In January of 2020 Michele filed the present lawsuit that
2 we're here for today. After filing the lawsuit in federal
3 court, Nappi began to scrutinize her work. And there isn't
4 much for Nappy to work with because they all agree Michele is
5 really good at her job, but they seized upon every opportunity
6 that presented.

7 In April of 2020 Michele was disciplined for purchasing
8 wine for an incentive program and paying for it with her own
9 money. This is something that Nappi not only allowed by other
10 sales representatives doing it and not getting in trouble for
11 it, but they also encouraged it. You're going to see an e-mail
12 from the wine manager saying this is the incentive program,
13 go -- you have -- this is a must hit. You have to hit this
14 incentive number, not it's optional if you want to. And you
15 can sell it to your mom, sell it to your grandmother, sell it
16 to your friends, buy it yourself, you -- you'll still make a
17 little bit of money.

18 But in this case suddenly in 2020, after Michele has filed
19 a lawsuit and brought up these issues of pay inequity and sex
20 discrimination, Michele is doing something wrong, and she is
21 completely caught off guard. Completely caught off guard.

22 She purchased some wine for this incentive program, paid
23 for it with her own check, wasn't trying to hide anything, and
24 suddenly she is getting questioned about it by management.

25 She is already terrified, she just filed a lawsuit against

1 her present employer. That's really difficult to do. It takes
2 a lot of courage to stand up for your rights and continue to
3 work there after asserting those rights, so she is feeling
4 uncomfortable at a minimum.

5 Later in 2020 Matt Watson, the new wine director, told
6 Michele that she was excluded from incentive programs at this
7 account that she had called Mike's Fish Market. Mike's Fish
8 Market was a really good account for Michele incentive wise.
9 It was an off-premise account, kind of these small markets
10 where you could go in, grab a bottle of wine off the shelves,
11 and they were really flexible with what she stocked them with.
12 She had a good relationship with them, so she could really
13 thrive with the incentive programs.

14 So, all of a sudden, Michele's excluded from the incentive
15 programs here, and you'll hear that's never happened to a sales
16 representative and that it's clearly done with the intent of
17 taking money away from her.

18 In the winter of 2020, I think December of 2020, Michele
19 was attending a meeting for this case, and this meeting was a
20 few hours long. It involved Michele Tourangeau, counsel for
21 Michele Tourangeau, counsel for Nappi Distributors, Christine
22 Fox. It was a Zoom meeting, but there were a lot of breaks in
23 between, lengthy periods. In between those breaks, Michele was
24 on her computer and placing orders, taking calls from
25 customers, placing orders, she had worked a lot in the morning,

1 and that evening she had a wine dinner that she was hosting.
2 So at 5:00 o'clock she would have a -- to travel down south and
3 present this wine dinner, introduce them to wine pairings, and
4 it would bring her late into the evening. All of a sudden, you
5 know, because Matt and Christine, she is under this new
6 scrutiny, they're keeping a watchful eye on her, and they
7 notice her timecard. Which is weird because she doesn't punch
8 in and out. No sales representatives punches in and out. It's
9 a -- not a nine-to-five job. It's never been a nine-to-five
10 job. And if you're doing your job well as a sales
11 representative, you're not doing a nine-to-five job. You're
12 working weekends, you're working nights, you're working
13 mornings, it's a lot. It's a demanding job. You're fielding
14 calls, you're doing it.

15 And they say to her in this e-mail, we noticed your time
16 slip you didn't use any PTO. That meeting was more than three
17 hours long so you need to use your PTO. And she responded, I
18 had never heard of this policy before, is this a new policy? I
19 don't understand why I would suddenly need to do this. I was
20 working throughout the meeting, I worked in the morning to be
21 able to go to the meeting, and I'm going to be working later
22 that night so that I can do this wine tasting, I'm going to be
23 working late into the evening. But it was clear they were
24 trying to penalize her, kind of get that gotcha moment, you
25 know.

1 Michele also, after bringing forward these issues of sex
2 discrimination, was excluded from a wine tasting dinner at a
3 restaurant in Portland called Chaval. Ian Brown, the
4 on-premise manager, had arranged for a wine tasting with a
5 supplier and had invited many of the sales representatives to
6 go with him. He did not invite Michele even though she had
7 seen him earlier that day.

8 Michele has also made a claim for unpaid wages, quantum
9 meruit, and unjust enrichment. These claims are all kind of
10 related. There are some technicalities between the three
11 different theories, but essentially it's that Michele worked
12 and she wasn't paid for the work that she performed.

13 I have kind of already gone over the maternity leave
14 issue, the urethral sling issue. There was also a time in
15 2015 -- February of 2015 where Ian Brown was covering Michele's
16 route while she was on vacation. At the time she was still a
17 new employee, she was not entitled to any paid time off, but
18 before starting the job with Nappi Distributors she had let
19 them know it's my cousin's wedding in Florida so I'm going to
20 have to go to that. So they said that's fine, we'll work with
21 you, no problem. Ian agreed to cover the route for her. Well,
22 Ian's wife was having a baby, and had the baby earlier than he
23 had expected, so he could no longer cover the route for
24 Michele, so Michele ended up working throughout this entire
25 vacation without any pay.

1 When she returned to work she saw the director, Paul Carr,
2 and she said to him -- or he said to her, you know, like, hey,
3 welcome back, nice to see you, how was your vacation? She
4 said, you know, thanks, it was nice, but, you know, I ended up
5 working throughout the whole vacation and I'm not getting paid;
6 and he goes, yeah, I kind of heard about that, that's weird,
7 huh, but didn't pay her. So.

8 Even if -- so -- sorry. My last point on that. Even if
9 you find that Nappi didn't pay Michele these wages for work
10 that she performed because of her sex or because of pregnancy,
11 every man and every woman is entitled to be paid for the work
12 that they perform. The law requires that Nappi pay Michele for
13 the work that she performed and for the sales that she
14 generated as a result of her efforts.

15 I've already kind of gone through a number of the
16 witnesses that you'll be hearing from. I'll try not to make
17 this too redundant here because I don't want to waste your time
18 and I get the feeling I'm being a little long winded right now.
19 But, like I said, you're going to hear from Michele, you're
20 also going to hear from members of management at Nappi. Those
21 members of management include Jim Bourque. He was the former
22 vice-president of human resources, he's over there in the
23 stands, hi, Jim. You're going to hear from Frank Nappi, Jr.,
24 he is the president and owner, and I -- I don't think that's
25 Frank there. I think that's Nick Nappi, another member of

1 management from Nappi Distributors sitting next to Jim. You're
2 also going to hear from Paul Carr, the former director of the
3 wine department. You're going to hear from Elmer Alcott, the
4 CFO -- former CFO for Nappi Distributors. He is still somewhat
5 involved, I -- I think semiretired status is what he is at
6 right now. You'll also hear from managers Ian Brown, Joline
7 Masters, Mike Hale, and I think Bill Monahan. What you're
8 going to hear from these managers is that Michele was good at
9 her job. Nobody disputes that. She is a hard worker. She is
10 a good sales representative.

11 You're also going to hear testimony from other witnesses
12 such as Afton Hawkins and Mandi Leigh Ford about their careers
13 at Nappi, and despite management agreeing that Mandi and Afton
14 were really good workers, too, they were sales assistants and
15 merchandisers, they put in a lot of hard work, they applied for
16 sales representative positions repeatedly but they didn't get
17 the positions.

18 You're going to hear that Mandi Leigh Ford was told by a
19 manager named Frank Maiorino that they don't hire women for
20 sales representatives because they're just going to get married
21 and get pregnant and go out on maternity leave. You're also
22 going to hear that Frank said the sales representative position
23 just isn't a position for women, he has daughters and he would
24 not want them doing that job.

25 You're going to hear from Afton Hawkins who, after

1 applying for a sales representative position and being turned
2 down, was told by a member of management, I don't think you got
3 the job because you're a woman.

4 You'll also hear from Dan Toolan. He is a sales
5 representative at Nappi Distributors. While Michele was out on
6 maternity leave, he was the sales assistant, and while working
7 as a sales assistant he was chatting with a manager Frank
8 Maiorino and Frank said, frustrated by the fact that he had to
9 provide coverage and use a sales assistant to cover Michele's
10 maternity leave, this is why we don't hire women as sales
11 representatives, because it was so burdensome and annoying for
12 him.

13 When you hear the evidence and the testimony, it might get
14 confusing. We're going to try to make it as clear for you as
15 possible, but it's a lot of information, it's spanning over a
16 lot of time, and you're going to hear long-time lines from
17 various witnesses. And what you'll need to do is determine
18 whether Nappi has met their burden of proof for establishing
19 whether their excuses for the alleged discrimination is in fact
20 legitimate and nondiscriminatory.

21 You have to look at the evidence as a whole. It's not
22 just the commission rate, and it's not just the routes, it's
23 not just the accounts and the routes, and it's not just the
24 testimony of one person or the other. You really have to wrap
25 your arms around all of the evidence and sort through it and

1 figure out what makes the most sense to you. And then you have
2 to ask yourself why was the line drawn at Michele Tourangeau
3 and did the fact that she is a woman play any role in that
4 decision.

5 Unconscious bias happens all the time in the world. Most
6 of the time it's glossed over, right or wrong, to avoid
7 conflict. We've all had that social interaction where somebody
8 says something and you kind of cringe but you don't say
9 anything because you like them, they're nice, and you don't
10 want to have that awkward conflict. But these are real people
11 in positions of power and that's the difference, it's not a
12 social setting. They're in positions of power and their biases
13 have real world implications and they really affected my client
14 Michele.

15 Michele wasn't willing to overlook it. She wasn't willing
16 to, you know, just kind of cringe and continue on, she stood up
17 for herself. That's why we're here today. These laws, the
18 Equal Pay Act, they don't mean anything unless employees stand
19 up for themselves and hold their employers accountable.

20 MR. WALL: Your Honor, we're in argument here.

21 THE COURT: Overruled.

22 MS. QUINLAN: Equal pay for equal work is a
23 fundamental civil right in our society. All workers, man and
24 woman, should have the right to fair pay. Unfortunately at
25 times reality has failed to live up to this ideal. Prejudice

1 and discrimination too often deny employees their fair pay
2 based on the work that they do. Such was the case for our
3 client Michele, and we ask that you find in Michele's favor.

4 And throughout this week we'll outline for you the kinds
5 of lost wages and compensatory damages, but we hope that you
6 see the evidence and see why Michele took the stand that she
7 did and why we're here today. Thank you.

8 THE COURT: Thank you, Attorney Quinlan.

9 Ladies and gentlemen, we usually take a break about this
10 time. If you're willing -- if you want to take a break, I'll
11 let you take a break. If you don't want to take a break, we'll
12 go right forward with the next. Does anybody want to take a
13 break now? I don't want to put people on the spot, but I don't
14 want you to be uncomfortable. I see no response.

15 Mr. Wall, would you like to give your opening?

16 MR. WALL: Yes, Your Honor, thank you.

17 THE COURT: You may proceed.

18 MR. WALL: Good morning, ladies and gentlemen. As I
19 indicated at the outset, Laura Maher and I represent Nappi
20 Distributors in this case. We're joined here today, and
21 throughout the rest of the trial, by Christine Fox who is the
22 human resources director at Nappi.

23 Nappi Distributors is a family business started by three
24 brothers. They operated for many years out of Portland and
25 currently, since 2007, have operated out of Gorham. The

1 current president of the company is Frank Nappi, Jr., who is
2 the son of one of the founders. Although Nappi started small,
3 it's currently an employer that employs approximately 200
4 people.

5 Nappi's business is a beer and wine distributor, and as
6 you probably surmised what that means is that they buy products
7 from suppliers and they sell them to various different types of
8 retailers. Retailers that sell the -- the products for
9 consumption on site are called on-premise accounts, and that's
10 like restaurants and bars and things like that, and other types
11 of -- of retailers that sell for consumption somewhere else, at
12 home or whatever, are considered off-premise. Just thought you
13 might want to know those terms because they probably will come
14 up throughout the course of the case. Those type of accounts
15 are like grocery stores and shops and things like that.

16 Now, this case involves the -- the wine side of Nappi's
17 business. Ms. Tourangeau is currently a wine sales
18 representative for Nappi and has been since she started at
19 Nappi in 2015. Currently she is one of three female wine sales
20 representatives for Nappi. During the time she has been a -- a
21 sales rep, Nappi has had as many as five females on that staff.

22 Ms. Tourangeau took over a route vacated by her current
23 supervisor Ian Brown when Ian Brown was promoted. Before Ian
24 had the route it was covered by Paul Carr who was actually the
25 wine sales director who hired Michele Tourangeau.

1 Most of the accounts in the route are in York County,
2 Kennebunk, Wells, Ogunquit, which means that most of the
3 accounts are geographically close to where Ms. Tourangeau lives
4 in Ogunquit. And you'll hear that both Ian Brown and Paul
5 Carr, who worked that route for many, many years, describe it
6 as a great route with terrific accounts and -- and a great
7 location.

8 And Ms. Tourangeau is going to tell you in this case that
9 this was the route she wanted when she met with Paul Carr to
10 discuss employment at Nappi. When she started there were more
11 on-premise accounts than off-premise which meant they were
12 busier in the summer than in the wintertime, so it -- it did
13 tend to be fairly seasonal. Since Ms. Tourangeau has worked
14 there, Nappi has added some accounts which has made it less
15 seasonal, made it more balanced in terms of on -- on-premise
16 and off-premise. In fact, in 2020 Nappi added a Hannaford
17 supermarket to her route that Ms. Tourangeau herself has
18 described as one of the highest grossing retail accounts at
19 Nappi.

20 Ms. Tourangeau's claims in this case, as you've heard,
21 basically break down to three allegations. First, that Nappi
22 discriminated against her in terms of compensation because of
23 her woman and because of preg -- because she is a woman and
24 because of pregnancy; that Nappi retaliated against her for
25 making complaints about the alleged discrimination; and that

1 Nappi failed to pay her for work that she did.

2 And I just want to talk to you a little bit about in sort
3 of more general terms some of the evidence that we expect
4 you'll hear to address those allegations.

5 Before Ms. Tourangeau was -- applied to Nappi, Nappi had
6 decided to go to a two percent commission rate for all its new
7 wine sales representatives. Previously Nappi had used a three
8 percent commission rate, but Nappi had more overhead for the
9 wine department in terms of supporting the sales staff. Many
10 of the wine sales representatives were making significantly
11 more than the other employees at Nappi and other peers in their
12 industry, and part of that was due to the fact that many of the
13 wine sales representatives at Nappi at the time had been there
14 for many, many years and had grown their routes sort of
15 organically, if you will.

16 By 2014 Nappi realized that some rerouting needed to be
17 done not only to adjust the routes but also to improve customer
18 service. So in 2014 the majority of the wine sales
19 representatives working for Nappi had been working for the
20 company for anywhere from seven to 20 years with a couple of
21 the wine sales representatives working there 25 years or more.
22 Based on their seniority with Nappi and their experience in
23 wine sales, Nappi decided to keep their commission rate at
24 two -- at three percent.

25 And Nappi decided -- decided to handle it that when those

1 people retired or they left the company Nappi would replace
2 them with new wine sales representatives at a two percent
3 commission, and that is what Nappi has done since 2014. You
4 will hear that all new wine sales representatives who are
5 compensated by commission at Nappi have been brought on with a
6 two percent commission rate regardless of their gender.

7 So when Paul Carr hired Ms. Tourangeau in 2014, he offered
8 her the two commission -- two percent commission rate. His
9 offer -- officer -- offer also included incentives. And
10 incentives are basically promotions that are done in
11 conjunction -- Nappi does it in conjunction with suppliers in
12 order to promote new placements for new products.

13 Because the route was pretty seasonal at the time that
14 Paul Carr had offered it to Ms. Tourangeau, he included a base
15 salary of approximately \$22,000. Now, normally Nappi preferred
16 not to use those type of base salaries for routes in southern
17 Maine, but Mr. Carr wanted to ensure that Ms. Tourangeau would
18 be able to budget for the slow periods that tended to occur on
19 the route which is why he put in the salary component.

20 About a year later, Mr. Carr hired Dan Toolan to work a
21 route in southern Maine. Like Ms. Tourangeau, Mr. Toolan
22 received a two percent commission. Mr. Toolan also got a
23 salary to augment the commissions and incentives that were part
24 of his package.

25 Now, Mr. Toolan, you're going to hear, lobbied hard to get

1 a three percent commission, and he took it right to Frank
2 Nappi, Jr., with his -- with his arguments, and you'll hear
3 that Mr. Nappi refused to budge, he kept him at the two percent
4 rate consistent with all the other new wine sales
5 representatives.

6 In 2018 a new wine sales director came onboard, a
7 gentleman by the name of Matt Watson. He completed some
8 rerouting that needed to be done with the wine sales routes,
9 again to improve efficiency, and these reroutings did have an
10 impact on the compensation for most of the wine sales
11 representatives.

12 Nappi took the opportunity to notify Ms. Tourangeau and
13 Ms. -- Ms. Tourangeau and Mr. Toolan that their salaries would
14 likely be eliminated. Ms. Tourangeau pushed back and made
15 arguments to Matt -- Matt Watson as to why Nappi should not
16 eliminate her -- her salary. Mr. Watson looked at the issues
17 that she raised, and as a result Nappi agreed to simply reduce
18 the salary by half in three steps. To date, only one of those
19 reductions has occurred. The others were suspended when --
20 when COVID hit. By contrast, Nappi simply eliminated
21 Mr. Toolan's salary in 2019.

22 Since that time, both Ms. Tourangeau and Mr. Toolan have
23 both made at least \$80,000 a year. For example, in this past
24 year, 2022, Ms. Tourangeau made about \$95,000 and Mr. Toolan
25 made about \$80,000. You will hear that Ms. Tourangeau has

1 never made less than \$72,000 a year for a full year's work at
2 Nappi. And in -- during 2020 she made about 80 -- \$85,000
3 thanks in part to a supplemental salary that Nappi paid her and
4 other wine sales representatives to tide them through the
5 shutdown.

6 Now, Ms. Tourangeau suggests that she didn't get paid for
7 work on three specific occasions. The first is a vacation she
8 took in 2015. And you will hear that Mr. Brown -- Ian Brown,
9 her supervisor, was covering for her but that his wife went
10 into early labor, and of course he -- he went to be with her to
11 take care of her during that time. You will hear evidence that
12 the period that he was unable to do coverage was only a matter
13 of days. And you will hear that during that period Ms.
14 Tourangeau was in Key West, Florida. You will also hear that
15 Mr. Brown arranged for coverage by others, other -- people
16 other than Ms. Tourangeau for most of that time.

17 Second, Ms. Tourangeau refers to a maternity leave she
18 took in 2016. Now, what Ms. Tourangeau didn't mention in terms
19 of her opening statement was that for that leave she elected to
20 take short-term disability for which she received wage
21 replacement. And like anyone else who went out on short-term
22 disability leave, she did not receive her salary or
23 compensation for sales that she -- that were made when she was
24 out. And you will also hear that no one at Nappi required her
25 to work during that leave.

1 Third, Ms. Tourangeau refers to a medical leave that she
2 had in 2019. Now, she took that leave -- as most people would,
3 she took that leave without describing what the -- the medical
4 procedure was and again she elected --

5 MS. QUINLAN: Objection, Your Honor.

6 THE COURT: Overruled.

7 MR. WALL: And again she elected to take short-term
8 disability. Now, you're going to hear that prior to leaving on
9 that short-term disability leave Ms. Tourangeau met with Becky
10 Douglass, who is the payroll specialist at Nappi, and
11 Ms. Douglass went over the short-term disability paperwork with
12 Ms. Tourangeau. Ms. Douglass explained to Ms. Tourangeau that
13 she could opt to take vacation time instead which would have
14 made Ms. Tourangeau eligible -- eligible to receive her salary
15 and commission, but Ms. Tourangeau did not want to take her
16 vacation time and so she again elected to -- elected to take
17 short-term disability and receive the wage replacement instead.
18 And again, like anyone else who went out on short -- short-term
19 disability, she was not eligible for the commissions and salary
20 that she otherwise would have had.

21 Related to that leave, you will also hear that Nappi later
22 offered to allow her to reverse that election and take vacation
23 time which would have therefore made her eligible for the
24 commissions and salary, but Ms. Tourangeau did not take Nappi
25 up on that offer.

1 Ms. Tourangeau's claim of retaliation is based in part on
2 the allegation that she was excluded from one dinner with a
3 supplier. Mr. Brown, Ian Brown, will be here and he will
4 explain how that dinner came about, how it was impromptu and in
5 the middle of the week and in Portland, and he figured he would
6 mention it to people who were locally in Port -- in Portland at
7 the time. He will tell you that he did not exclude anyone from
8 the dinner in retaliation for anything or because of their sex.

9 Ms. Tourangeau also bases her claim of retaliation
10 because -- on -- on the allegation that she was prevented from
11 earning incentives from one account. There were actually a
12 couple of instances in which Matt Watson had to address Ms.
13 Tourangeau's incentive sales.

14 One occasion she appeared to be placing them with closed
15 accounts. Mr. Watson met with her and explained that that was
16 not permissible. During that meeting she apologized, and she
17 also acknowledged during that meeting that she did not feel as
18 though she was being singled out.

19 On another occasion, Mr. Watson learned that Ms.
20 Tourangeau had been placing incentive items with one account,
21 it's called Mike's Fish Shack, for an extended period of time
22 without any reorders. He considered what he was seeing to be
23 an abuse of the incentive programs which were designed to
24 promote new placements. So he and Mr. Brown will explain that
25 they had never seen this type of overreaching in any kind of

1 incentive program by any other sales representative.

2 Mr. Watson let her know that she wouldn't be eligible for
3 incentives at that account moving forward for that reason. He
4 will explain that it had noting to do with her allegations in
5 this case, that he was simply addressing what he considered to
6 be a grossly irregular business practice.

7 Finally, Ms. Tourangeau will suggest that Nappi
8 discriminates generally with regard to hiring women. In
9 actuality, you're going to hear about the many women who work
10 at Nappi and keep the place going. You'll also hear from some
11 of them as witnesses. Some of them are women who used to work
12 at Nappi in the wine department, some are women who currently
13 work at Nappi such as Ms. Fox who is the director of human
14 resources and Joline Masters who is the manager of key accounts
15 in the wine department. Both of these women are management
16 level positions, hold management level positions at Nappi. And
17 of course you'll hear from Ms. Tourangeau herself who is still
18 currently employed at Nappi.

19 Now, you will hear her say that Nappi gave her the route
20 she wanted. She will acknowledge that Nappi has made
21 improvements to the route over -- that she covers over the
22 years including giving her one of the highest grossing accounts
23 that Nappi has. You will hear evidence that Nappi has paid her
24 for the work she has done and that it has compensated her at
25 the same commission rate as all other new wine sales

1 representatives hired since 2014.

2 Now, at the end of the case we'll have an opportunity --
3 Ms. Quinlan and I will have an opportunity to talk to you about
4 what we think the evidence shows in this case, and at that time
5 we will ask you to return a verdict -- Nappi will ask you to
6 return a verdict in favor of it -- Nappi on all claims.

7 In the meantime, Nappi appreciates your work in this case
8 and looks forward to presenting the evidence, and we know that
9 you'll pay close attention to everything that's submitted by
10 the parties. Thanks very much.

11 THE COURT: Thank you, Mr. Wall.

12 Ladies and gentlemen, we are now going to take our first
13 break. We're going to take a break for 15 or 20 minutes.
14 Don't discuss the case and enjoy yourselves.

15 THE CLERK: All rise, jury exiting.

16 (Jury exited. Time noted: 10:12 a.m.)

17 THE COURT: Court will stand in recess.

18 (A break was taken from 10:13 a.m. to 10:34 a.m.)

19 THE COURT: Would you bring the jury in, please.

20 MS. WHITE: Your Honor, I actually had an objection
21 that we wanted to make to the opening statement by defendant,
22 if that's something that should be handled now or at sidebar.
23 I didn't want to delay the break any longer.

24 THE COURT: All right, you can be seated. What's the
25 objection?

1 MS. WHITE: Well, Your Honor, my understanding from
2 our conference the other day was that any mention of wage
3 replacement or short-term disability benefits in terms of the
4 collateral source motion in limine defendant would essentially
5 have the burden of proving why that was not a collateral
6 source. To our understanding there is no further evidence.
7 We've certainly not received any documentation or information
8 that proves that up. So we're very concerned that the jury has
9 now been tainted by hearing about wage replacement. I think it
10 warrants a curative instruction unless there is going to be
11 some evidence that will prove that up, and of course if there
12 is such evidence we need to have it.

13 THE COURT: Mr. Wall.

14 MR. WALL: Well, Your Honor, I don't believe your
15 ruling indicated that this was not something that could be
16 discussed as part of opening or that it wouldn't be subject to
17 proof as part of this case. In addition, the existence and
18 receipt of short-term disability benefits goes beyond any
19 collateral source issue and goes to basically what she elected
20 to do in the circumstances, so we think it's perfectly
21 acceptable to comment on it.

22 THE COURT: Yeah, I -- I think it's -- the comment was
23 there for more than one reason and --

24 MS. WHITE: Okay.

25 THE COURT: -- therefore I'm going to overrule the

1 objection. I don't think it was strictly on collateral source,
2 and collateral source is a question of setoff which would be
3 argued or not to the jury based on whatever proof the employer
4 comes up with.

5 MS. WHITE: Thank you, Your Honor, and one other very
6 brief issue. We had a witness calling into the clerk's office
7 this morning inquiring whether he would be appearing live or by
8 Zoom tomorrow. We counsel had an opportunity to discuss it
9 briefly, and our understanding is it's been more than five days
10 since he was diagnosed with COVID so we're wondering if he is
11 allowed to appear live, which would be the witness's
12 preference, and counsel's as well, I believe.

13 THE COURT: Well, I think I told you to talk to Eric
14 Storms about that.

15 MS. WHITE: Oh, thank you.

16 THE COURT: Would you bring the jury in, please.

17 (Jury entered. Time noted: 10:41 a.m.)

18 THE COURT: You may be seated. First witness.

19 MS. QUINLAN: Yes, Your Honor, plaintiff calls James
20 Bourque to the stand.

21 THE CLERK: Please raise your right hand. Do you
22 solemnly swear that the testimony you shall give in the cause
23 now in hearing shall be the truth, the whole truth, and nothing
24 but the truth, so help you God?

25 THE WITNESS: Yes.

~~Bourque - Direct Examination/Quinlan~~

1 THE CLERK: All right, please be seated, pull yourself
2 right up to the microphone, please state and spell your first
3 and last name for the record.

4 THE WITNESS: James, J-A-M-E-S, Bourque,
5 B-O-U-R-Q-U-E.

6 DIRECT EXAMINATION

7 BY MS. QUINLAN:

8 Q. Good morning, Mr. Bourque.

9 A. Good morning.

10 Q. And is it okay if I call you Jim or would you prefer --

11 A. That's fine.

12 Q. -- Mr. Bourque?

13 A. No, Jim's fine.

14 Q. Okay, Jim. How are you doing today?

15 A. Very well, and you?

16 Q. Good, thank you.

17 A. Great.

18 Q. So I just wanted to talk to you about your career at Nappi
19 Distributors. I understand that you started working there
20 sometime around 2000, 2002; is that right?

21 A. Yes.

22 Q. And how was it that you came to start working at Nappi
23 Distributors?

24 A. I was -- I was a part owner of an outfit called Cumberland
25 & York Distributors, and we were purchased by Nappi

Bourque - Direct Examination/Quinlan

1 Distributors, and Nappi was kind enough to bring all of our
2 employees onboard when the sale took place.

3 Q. And what was your position when you were working at
4 Nappi -- Cumberland & York Distributors?

5 A. President.

6 Q. You were the president?

7 A. Yes.

8 Q. Okay. And how did you become the president of Cumberland
9 & York Distributors?

10 A. Actually, it was kind of a sad situation. My brother was
11 working at Cumberland & York and was killed in a car accident.
12 At the same time where I was working the -- closing shop and
13 moving to South Carolina, at the time I was working in
14 Massachusetts. And my dad, who was one of the -- the major
15 stockholder at Cumberland & York, asked me do you think you
16 would like to come back and start working in the beer business,
17 so that's how that happened.

18 Q. I'm really sorry about that.

19 A. Thank you.

20 Q. So I understand you had sort of a career shift at that
21 time?

22 A. Yes.

23 Q. What was it that you were doing before going to Cumberland
24 & York?

25 A. I was a project engineer which was kind of like mechanical

—Bourque - Direct Examination/Quinlan—

1 engineering background at an outfit called American Bosch in
2 Springfield, Massachusetts -- Massachusetts, excuse me.

3 Q. Okay. And how long was it that you were working at
4 Cumberland & York Distributors?

5 A. Probably, oh, 15, 20 years almost. 15, 18 years, I think.

6 Q. Okay. And were you the president for the entire duration?

7 A. I -- I think so. I can't remember. We had a -- we had --
8 I might have been the VP for a while and then we had some --
9 some shifts. They made my -- my dad was president, they made
10 him a CEO and I became a president.

11 Q. Okay. And what was it that you were doing as the
12 president of Cumberland & York Distributors?

13 A. Kind of learning -- learning the ropes a little bit. Most
14 of the stuff had to do with buying insurances, meeting with
15 bankers, stuff like that.

16 Q. Okay. So more of the business end as opposed to the sales
17 end; is that correct?

18 A. Correct.

19 Q. Okay. And so I understand you started working for Nappi
20 Distributors when Nappi acquired Cumberland & York
21 Distributors?

22 A. Yes.

23 Q. And when you started working for Nappi Distributors, what
24 was your position?

25 A. I think vice -- I was a vice-president.

—Bourque - Direct Examination/Quinlan—

1 Q. And as -- were you the vice-president of human resources?

2 A. Yes.

3 Q. And as the vice-president of human resources, what were
4 the sorts of things that you did on a daily basis?

5 A. Actually quite a bit it had to do with safety on the
6 workforce, workers' comp, dealing with insurances, car
7 accidents that happened with the employees, mostly on that
8 side. Some -- a few other things. Sometimes I would be called
9 into disciplinary situations. So quite a lot of it was the
10 nuts and bolts of workers' comp and auto insurance. Worked
11 quite closely with Becky Douglass on certain occasions.

12 Q. And that kind of segued right into my next question. Who
13 was it that reported to you while you were the vice-president
14 of human resources?

15 A. I think Becky did, but it was really kind of a loose
16 situation. I didn't really -- I don't think I had many direct
17 reports.

18 Q. Okay. And did you report to anybody at Nappi Distributors
19 as the vice-president?

20 A. Probably Elmer Alcott.

21 Q. And who was Elmer Alcott?

22 A. He would be like he would have been the CFO, chief
23 financial officer.

24 Q. And how long did you work at Nappi Distributors?

25 A. Probably 15 years. Ten, fifteen, in that ballpark.

—Bourque - Direct Examination/Quinlan—

1 Q. And as the vice-president of human resources, did you have
2 any duties for training employees on discrimination policies,
3 retaliation policies, that sort of thing?

4 A. We -- I think we had part of that as an introductory thing
5 we highlight it in the employee handbook and make people aware
6 of it.

7 Q. Did you provide any trainings to employees beyond what was
8 stated in the employee handbook with respect --

9 A. No, not that I can remember.

10 Q. Are you aware of anybody at Nappi Distributors, aside from
11 yourself, that would have or did provide training to the
12 employees at Nappi Distributors on the discrimination and
13 retaliation policies?

14 A. No, I -- I can't think of it. We mostly referred to the
15 handbook, kind of a boilerplate situation.

16 Q. Did you draft the handbook?

17 A. No. The handbook we had I think it was probably a meld of
18 what Nappi had and what Cumberland & York had. We tried to
19 update it as -- as time went on.

20 Q. Was there ever an occasion where you went through and sort
21 of drafted what would be contained in the handbook or pick and
22 chose which portions would comprise the handbook as it was
23 updated?

24 A. Mostly we'd -- we -- we would go online, I think we -- at
25 least one service online, and we kind of relied on them to make

Bourque - Direct Examination/Quinlan

1 sure we covered all the bases. Some of the stuff -- you know,
2 any things that were, you know, company specific I think we
3 would add that, but the overall thing I think we -- I think we
4 hired a -- either got online or hired a service to make sure we
5 try to be compliant.

6 Q. Okay. While you were working at Nappi Distributors, did
7 you ever receive any complaints of discrimination?

8 A. I don't remember any.

9 Q. And how about any complaints of retaliation, did you ever
10 receive those?

11 A. No, not that I can recall.

12 Q. If those complaints had come about, would you have been
13 the person responsible for investigating those complaints?

14 A. Yes. Yes.

15 Q. I would like to know about any management meetings that
16 you participated in. While you were the vice-president of
17 human resources at Nappi Distributors, did you have any
18 regularly scheduled or regularly held meetings with other
19 members of management?

20 A. We tried -- toward the end we tried to get together on a
21 weekly basis. It -- it was not a real hard and fast schedule,
22 but we did try to get together. I attended some of the sales
23 meetings really not as a -- as a management role but just to,
24 you know, see what was going on in both beer and sales -- sales
25 meetings, sales meetings, wine -- beer and wine.

—Bourque - Direct Examination/Quinlan—

1 Q. And when you started having these weekly management
2 meetings, who were the people that were attending those
3 meetings?

4 A. We'd have usually Frank Nappi, Jr.; Elmer Alcott; Frank
5 Nappi, Sr., when he was alive; myself; operations guy Nick
6 Nappi; and usually the -- oh, the head -- the -- of beer and
7 wine sales heads, usually both -- jeepers, I think it was --

8 Q. Would that have been Chris Black and Tim Coffee?

9 A. Tim Coffee, Chris Black, and Paul Carr. Generally
10 speaking, that was -- that was the makeup.

11 Q. Okay. And I would like to show you what I have marked as
12 Exhibit 21. Can you see the document that I'm putting up on
13 your screen?

14 A. No. Oh, there we are.

15 Q. Can you see it now?

16 A. Yes.

17 Q. And are these the individuals that you just described for
18 me?

19 A. Say it again?

20 Q. Are those the individuals that you just named for me?

21 A. Yes.

22 MS. QUINLAN: Your Honor, I would like to admit
23 Plaintiff's Exhibit 1 -- 21, page one.

24 THE COURT: Any objection?

25 MS. MAHER: No, Your Honor.

—Bourque - Direct Examination/Quinlan—

1 THE COURT: 21 -- you said 21, page one?

2 MS. QUINLAN: 21, page one, yep.

3 THE COURT: Is admitted without objection.

4 MS. QUINLAN: And if I could, I would like to publish
5 this to the jury.

6 THE COURT: You may.

7 BY MS. QUINLAN:

8 Q. And I'm just kind of using my pointer here, is this
9 gentleman over to the side here Tim Coffee?

10 A. Move it again.

11 Q. Right here?

12 A. Yes.

13 Q. And then next to him is this Paul Carr?

14 A. Yes.

15 Q. And is this Nick Nappi?

16 A. Yes.

17 Q. And then in the middle is that Frank Nappi, Jr.?

18 A. Yes.

19 Q. And Elmer Alcott?

20 A. Yes.

21 Q. And then yourself?

22 A. Yours truly.

23 Q. And then Chris Black --

24 A. Yes.

25 Q. -- is that correct? Okay. Thank you.

Bourque - Direct Examination/Quinlan

1 So in these meetings that you had with those individuals,
2 what -- what types of things were discussed?

3 A. Oh, general things, problems that might have been going
4 on, you know, in different areas: Sales complaints; warehouse
5 complaints; worker shortages; employment issues; and maybe
6 insurance, you know, if we had a bad accident or -- either
7 truck, car, whatever.

8 Q. When you discussed the worker shortages, would you also
9 discuss posting jobs or the need to hire for certain positions?

10 A. Say that again.

11 Q. When you were discussing in these meetings the worker
12 shortages, would you also discuss job postings or the need to
13 hire for certain positions?

14 A. Yes.

15 Q. And what was your understanding of how Nappi Distributors
16 would hire for the sales representative positions if they
17 became available?

18 A. Quite often they would look inside and the -- the people
19 in those areas had a feel for the -- the general market and
20 that might include talent at other organizations. Not always,
21 but, you know, some of them might -- some grapevine issue might
22 come up and say, oh, so and so.

23 Q. Oh, I didn't quite catch that last part, sorry.

24 A. Oh, what did I say? Grapevine.

25 Q. Through the grapevine?

Bourque - Direct Examination/Quinlan

1 A. Yes. Yeah, there is -- the people that worked those
2 things they know the area pretty well and you hear a lot of
3 scuttlebutt, and typically you try to look for someone with the
4 talent and try to promote from within if at all possible.

5 Q. Okay. So Nappi would either look at people that were
6 already employed by Nappi --

7 A. Yes.

8 Q. -- in terms of some sort of promotion; is that right?

9 A. Yes.

10 Q. And if that wasn't a viable option then they'd sort of
11 refer on referrals or recommendations from people already
12 within the organization; is that right?

13 A. Yes, and that -- and it -- that could extend beyond even
14 the local market. Every -- every product line we have they
15 have representatives and they come in. That's another pool.
16 Sometimes there is -- there is folks that would like to come
17 from the supply side into the distributor side. That happened
18 -- Chris Black, for instance, at one time worked for a
19 supplier, and, you know. Which was good, that gives him a lot
20 of good experience, and ended up coming back into the
21 distributor network.

22 Q. So oftentimes supplier representatives might be a resource
23 for filling these positions or know somebody who --

24 A. Yes, and networking I guess you would call it, yeah.

25 Q. Would you say it was more often the case than not that

—Bourque - Direct Examination/Quinlan—

1 that's how the positions were filled and -- for sales
2 representatives and that the jobs weren't themselves publicly
3 posted where somebody could read it somewhere and send in an
4 application or a resume?

5 A. As -- as networking within the organizations and within
6 the supply people that we would use as a primary. As -- as --
7 during my tenure there, online stuff became more popular and
8 that started to become another -- and instead of we used to --
9 way back you would run an ad in the paper and then that all
10 changed, you know, you would go online.

11 Q. Are you specifically aware of any sales representative
12 position being posted online or in the paper?

13 A. I can remember some, yes. Yes. The ones I got involved
14 were usually warehouse and -- warehouse and drivers.

15 Q. And I kind of want to set -- oops, sorry. I kind of want
16 to set aside the warehouse and --

17 A. Yes.

18 Q. -- the driver positions, but specifically --

19 A. Sales I don't remember that much going to the -- you know,
20 online or on the -- it could have happened, I don't -- I don't
21 recall it.

22 Q. Okay. Would you say it's fair to say that more often than
23 not those positions were filled through the grapevine?

24 A. Well, within -- certainly part of it, yes.

25 Q. Okay.

—Bourque - Direct Examination/Quinlan—

1 A. We always tried to do from inside, though, if at all
2 possible, look for in-house talent.

3 Q. Okay. And Chris Black, I understand that he is one of the
4 individuals who started working at Cumberland & York and then
5 kind of came over to Nappi Distributors; is that right?

6 A. Yeah, he worked at -- geez, he worked at Cumberland & York
7 drive -- as a -- in a driver position, and I think he got into
8 sales, and then left and I believe he -- Shipyard, I think he
9 went to work for Shipyard for a while. And it was interesting
10 because at the time Shipyard was purchased by Miller Brewing
11 Company, and that was -- that was quite an experience to have a
12 big outfit come in and you get to learn how they operate, and
13 then I think it reverted back to local ownership, and then he
14 came back into the distributor fold.

15 Q. Okay. And Shipyard, those are -- that's one of the beer
16 suppliers that Nappi sells to its accounts; is that right?

17 A. Yes.

18 Q. Okay. Did you have -- while you were working at Nappi
19 Distributors, were there any female sales representatives?

20 A. In -- in beer. If I remember right, we had at least two I
21 can recall.

22 Q. And what were their names?

23 A. Kristen Curran.

24 Q. Kristen Curran?

25 A. Curran, yeah.

—Bourque - Direct Examination/Quinlan—

1 Q. Is her name currently Connelly?

2 A. Yes, it is, that's -- I forgot, you're right.

3 Q. And who else?

4 A. Shayla.

5 Q. Shayla Wormel?

6 A. I think so, yes, yep. Those are the two I can recall.

7 Q. And is it your understanding that they were sales
8 representatives or were these two people sales assistants
9 looking to become sales representatives?

10 A. Shayla might have been on the assistant level and Kristen
11 was I believe working into -- she may have got into sales, but
12 definitely in the sales force.

13 Q. Okay. Do you know whether Kristen Connelly or Kristen
14 Curran had her own route?

15 A. I can't remember the arrangement, but she was out --
16 definitely out on the tree. I can't exactly rather remember
17 the -- I don't know if that -- I don't know the -- what the
18 technical breakdown was, but she was definitely in sales, had
19 accounts. Mostly I think or some in -- a lot in Portland and
20 beyond.

21 Q. Did you say she was out on maternity leave?

22 A. Say that again.

23 Q. I couldn't -- I couldn't tell if you had just said she was
24 out on --

25 THE COURT: Why don't you pull the microphone up. I

—Bourque - Direct Examination/Quinlan—

1 think he is having trouble hearing you, pull the microphone up.

2 Q. Oh, I -- I couldn't tell if you had just said something
3 about Kristen being out on maternity?

4 A. No.

5 Q. No, okay.

6 A. No, she had -- she might -- geezers creepers. I meant she
7 had -- her accounts were in town and some beyond the city.

8 Q. Okay. How long was Kristen working at Nappi Distributors?

9 A. Boy, I don't know, five, six years, I think. That's a
10 guess.

11 Q. Do you think she was hired on as a sales representative or
12 was she hired on as a sales assistant or a merchandiser?

13 A. I don't recall.

14 Q. And I understand her husband was also employed at Nappi
15 Distributors?

16 A. Yes.

17 Q. Okay. And was his name Pat?

18 A. Pat, yes.

19 Q. Okay. And did Kristen end up leaving Nappi?

20 A. Yes.

21 Q. Do you know why she left?

22 A. I think -- I think she had a -- had an injury lifting a
23 barrel, she tweaked her back. And we worked -- jeepers, we
24 worked pretty hard with her trying to get her back to full --
25 full duty status and, jeepers, I -- I think she eventually just

Bourque - Direct Examination/Quinlan

1 left because of that.

2 Q. And since you handled the comp claims, is that how you're
3 familiar with her --

4 A. Yes.

5 Q. -- injury? Okay. Did her husband also leave his
6 employment with Nappi Distributors or did he stay there?

7 A. No, he left.

8 Q. Do you know why he left?

9 A. I'm not exactly sure. I think -- he was a driver for us
10 and that's a lot of physical work. It's more than just the
11 driving, it's the delivering. He had a lot to contend with,
12 the weather and so forth. I think he got a little worn out
13 from that, and I believe he went to a job that was more of a
14 long haul tractor trailer type job.

15 Q. Okay. Do you know who Melanie Larocca is?

16 A. Yes. I've heard the name and I've met her.

17 Q. And you met her?

18 A. Yes.

19 Q. How did you meet her?

20 A. I can't remember. I think there was a reception of some
21 kind having to do with she was I think a wine salesperson at
22 Nappi before I was involved there.

23 Q. Was she part of the wine management team?

24 A. I'm not sure if it was wine management or wine sales, I
25 can't -- I don't know.

—Bourque - Direct Examination/Quinlan—

1 Q. Okay. Did you come to understand that she had claimed
2 that she was discriminated against because of her sex?

3 A. I -- I heard something -- I don't know if it was sex or if
4 there was pregnancy involved.

5 Q. Okay. Other than Kristen and Shayla or Shayle, who may or
6 may not have been sales assistants or sales representatives,
7 while you were working at Nappi Distributors are you aware of
8 any other female sales representatives?

9 A. In sales, I -- not that I can recall.

10 Q. Okay.

11 A. In my time there.

12 Q. What is your understanding of why it took so long to hire
13 a female sales representative?

14 A. Boy, it -- it traditionally had been a -- a male role.
15 I -- when my dad had his company, started in 1947, I would hang
16 around there a lot and a hundred percent male. Just looking
17 back, things started to change and part of it was the suppliers
18 would start to send female reps, and I think that kind of led
19 to, you know, more openings or more consideration of, you know,
20 male -- female representatives in sales. It can be a
21 physically -- physically challenging job.

22 Here's what usually happens, you'll be the biggest -- the
23 biggest day of the year for most beverage companies is 4th of
24 July, that weekend, everything builds up to that and it takes
25 off. If 4th of July is a Sunday, you're going to get the call

Bourque - Direct Examination/Quinlan

1 4:30 on a Friday afternoon, all your trucks are out, the whole
2 crew is gone, the sales guy is making -- I'm out delivering
3 probably, that's the time you get so and so needs a barrel in
4 Kittery, two barrels right now, and that, boom, you got to try
5 to handle that.

6 Q. Okay.

7 A. So those kind of situations it's -- it's -- it can be a
8 challenging, but it's -- it's not impossible though.

9 Q. Right.

10 A. You know what usually happens, we -- the gals will go and
11 make the delivery and the -- the accounts help them so it works
12 out great.

13 Q. Yep. Okay. Do you know who Frank Maiorino is?

14 A. Yes.

15 Q. Who is he?

16 A. I believe he was like a rep -- supervisor in the wine
17 department.

18 Q. Okay. And was his role primarily to manage the sales
19 assistants?

20 A. No, I think salesmen.

21 Q. Salesmen? Okay.

22 A. I think it was the sales guys.

23 Q. Had you ever received any complaints about any of the
24 comments that Frank Maiorino made?

25 A. No.

Bourque - Direct Examination/Quinlan

1 Q. Okay. Do you know Mandi Leigh Ford?

2 A. Say it again.

3 Q. Do you know Mandi Leigh Ford?

4 A. Mandi?

5 Q. Amanda, sorry.

6 A. Yes, yes.

7 Q. Did she ever come to you and tell you that Frank said he
8 wouldn't hire her for a sales position because she was a woman?

9 A. Boy, I -- I would have remembered that I think. I don't
10 remember that.

11 Q. Okay. How about Afton Hawkins, do you know who Afton
12 Hawkins is?

13 A. Yes.

14 Q. Did Afton ever tell you that she was passed over for a
15 sales position because she was a woman?

16 A. No, that -- not that I recall.

17 Q. Have you ever heard Frank Maiorino say that he has
18 daughters and that he wouldn't want them working in the sales
19 position?

20 A. No.

21 Q. You have daughters, correct?

22 A. Yes.

23 Q. How many?

24 A. One.

25 Q. And do you have a daughter-in-law?

Bourque - Direct Examination/Quinlan

1 A. Excuse me?

2 Q. Do you have a daughter-in-law?

3 A. Yes, yes.

4 Q. Is the -- is there something about the sales
5 representative position that would make you not think it was a
6 good job for them to have?

7 A. My daughter and my daughter-in-laws I don't think they
8 would have a problem with it at all. I -- they'd --

9 Q. Okay.

10 A. They would adapt and make it happen. That's just the way
11 they are.

12 Q. Strong women.

13 A. My feelings or -- geez, I wouldn't hesitate in the -- at
14 all.

15 Q. Okay. Did you have any role in setting the compensation
16 for the sales representatives?

17 A. No.

18 Q. Was the compensation for the sales representatives
19 discussed in any of these management meetings that you
20 attended?

21 A. If it was, very globally, you know, just.

22 Q. Okay. And I understand that sometime in like 2007 there
23 was a reduction in the commission rates for wine sales
24 representatives; is that right?

25 A. That may be true.

—Bourque - Direct Examination/Quinlan—

1 Q. And my understanding is that that reduction in the
2 commission rate from three-and-a-half percent to three percent
3 was applied across the board to all representatives; is that
4 right?

5 A. I don't know.

6 Q. Okay. How about the hiring procedures? Were you at all
7 involved in interviewing or making job offers to applicants for
8 Nappi Distributors for --

9 A. No. What I would do is -- I would just check the license,
10 driving license.

11 Q. Did you have any responsibility for keeping track of
12 payroll or signing off on payroll?

13 A. No.

14 Q. Who was doing that?

15 A. When you say payroll, you -- do you mean the nuts and
16 bolts like a administration or?

17 Q. I mean both. So the nuts and bolts administration and
18 whoever had to sign off and approve it?

19 A. Okay, that would be all of the supervisors or -- and I
20 don't -- a lot of that would be supervisors, and if there was
21 a -- if it was a big change for -- or whatever it would be
22 bounced up probably right to Frank, Jr.

23 Q. Okay. I wanted to show you one more document. And I'm
24 showing you what's been marked as Exhibit 25, can you see this
25 document?

Bourque - Direct Examination/Quinlan

1 A. Yes.

2 Q. And it's a little big, let me -- I mean a little small,
3 let me make that bigger.

4 A. Yes.

5 Q. Did you send this e-mail?

6 A. Ooh. I guess I did.

7 Q. And why were you sending this e-mail out?

8 A. Well, we tried to establish a monthly safety meeting, and
9 I -- that's interest -- sexual harassment, I didn't even
10 realize we had done that. Most of the meetings were because I
11 was involved with the workers' comp aspect. We tried to have a
12 meeting and then we would have heads of each department come to
13 the meetings and, you know, go over we would like you to tell
14 your guys to remember to lift correctly and use your back and
15 we're planning a session, you know, to have someone come in to
16 help you with stretching and different things like that.

17 Q. And I see here that you have attached a handout on sexual
18 harassment.

19 A. Yes.

20 Q. Is this the type of thing that you would provide to the
21 employees on issues such as sexual harassment?

22 A. We would provide it to the managers --

23 Q. Okay.

24 A. -- or supervisors.

25 Q. And the managers would be responsible for --

Bourque - Direct Examination/Quinlan

1 A. Yes.

2 Q. Okay.

3 A. Yep.

4 Q. Do you know whether or not sales representatives were
5 required to punch in and out while they worked at Nappi
6 Distributors while you were there?

7 A. Sales -- sales reps typically not. That I can remember.

8 Q. Okay.

9 A. Sales you mean pure sales guys?

10 Q. Yep. Yep.

11 A. No, usually not.

12 Q. Okay. And what is the reason for that?

13 A. It's -- it's not an hourly position, you know, it's
14 commissions and draws and this. Typically they'll -- they
15 maybe not even come in to punch in every day, they leave right
16 from work to the first stop.

17 Q. And do you mean by that that they're out with their
18 accounts on the road going from restaurant to store?

19 A. Yes.

20 Q. Bouncing around kind of? And is the job a typical
21 nine-to-five job --

22 A. No.

23 Q. -- where --

24 A. Not at all.

25 Q. Okay. So I understand that the sales reps they're kind of

Bourque - Direct Examination/Quinlan

1 doing their thing at all hours; is that right?

2 A. Quite possibly, yes.

3 Q. Okay. And I understand that for the -- the sales
4 representatives across the board the summer is really the peak
5 season for everybody; is that right?

6 A. Absolutely, yes.

7 Q. And did Nappi have to hire sales assistants to assist the
8 sales representatives through that peak season?

9 A. I think sometimes yes.

10 Q. Okay. So the function of the sales assistant was not
11 solely to cover vacations when sales representatives weren't
12 present, it was also to just be an extra set of hands when
13 things were crazy.

14 A. Repeat that.

15 Q. Is it true that the sales assistants were not -- the
16 position was not created by Nappi solely to cover vacations and
17 time away for sales representatives, but they were also hired
18 because Nappi and the sales reps need an extra set of hands
19 when things were really busy and everybody -- it was kind of an
20 all hands on deck situation?

21 A. I recall mostly it would had to do with our -- we have a
22 group of individuals called pack out people that go to both
23 wine and beer and to fill the coolers and shelves at major big
24 accounts. That was usually where the bulking -- bulking up
25 went.

—Bourque - Direct Examination/Quinlan—

1 MS. QUINLAN: Your Honor, I move to admit Exhibit 25.

2 THE COURT: Any objection to 25?

3 MS. MAHER: No, Your Honor.

4 THE COURT: 25 is admitted without objection.

5 MS. QUINLAN: I would like to publish to the jury.

6 THE COURT: You may.

7 BY MS. QUINLAN:

8 Q. Jim, I'm almost done with you, I promise.

9 A. That's all right.

10 Q. While you were at Nappi Distributors, was there any
11 maternity policy?

12 A. Yes.

13 Q. And was that maternity policy reduced to writing?

14 A. Say it again.

15 Q. Was the maternity policy reduced to writing?

16 A. Boy, I missed that, I'm sorry.

17 Q. Sorry. Was the maternity policy written down anywhere?

18 A. It probably was in the handbook something to that I think.

19 Q. So if there was a maternity leave policy we could look in
20 the handbook and that's where we would find it?

21 A. Yes, so I don't -- usually the same options that John Wall
22 outlined, you know, as far as time off or using your own time,
23 try to have some flexibility like that.

24 Q. And what was the maternity leave policy as you remember
25 it?

—Bourque - Direct Examination/Quinlan—

1 A. Gee, that's not -- I can't remember what it was.

2 Q. Okay.

3 A. Usually the -- the folks would go to see Becky and give
4 them the options what was involved.

5 Q. Who was it, Becky?

6 A. Becky Douglass, yeah, Rebecca.

7 Q. And the policy that you're referring to, is it just
8 Nappi's short-term disability policy?

9 A. It could be that, whatever what -- was available.

10 Q. And I understand that short-term disability not all
11 employees at Nappi Distributors get that benefit, they have to
12 elect it and pay for it; is that right -- is that right?

13 A. I believe so. I think that's correct.

14 Q. Did you ever have any training yourself on discrimination
15 based on sex, sexual orientation, disability, race, that sort
16 of thing?

17 A. What was the last one?

18 Q. Race.

19 A. Race, no, not -- not really formal. I probably attended
20 seminars.

21 Q. And you attended seminars that were teaching you as a
22 member of management what you needed to know?

23 A. Yes, at least some exposure to it.

24 Q. Okay.

25 A. Probably not nearly as much as I needed to know, but.

—Bourque - Direct Examination/Quinlan—

1 Q. And while you were there at Nappi, what was your
2 understanding of what you would do if you learned of a
3 complaint of discrimination?

4 A. I -- we would try to meet with the person to verify what
5 was going on, have a meeting. We had one situation where we
6 had I think in the wine -- wine department a few years back we
7 had a -- a black individual working there, nice guy, and there
8 was something going on, they were giving him a hard time, so
9 there is a fellow in the -- Mr. Nick Nappi and I got the crew
10 together and we made it very clear that what you're doing
11 it's -- we're not going to put up with it, it's -- it's
12 illegal. And I kind of referred to, you know, I lived through
13 some of this stuff, granted in the north but in the early --
14 right through the 60s a lot of -- lot of civil rights stuff
15 going on, and it -- we just -- it's the law, we're not putting
16 up with it, if you don't like it the way it is, you don't have
17 to work here, no one is forcing you, and it all seemed to go
18 away.

19 Q. Okay. And was that individual's name Martin Cleveland?

20 A. Boy, I can't remember. Geez. Geez, he had a son named --
21 oh, boy. He had a son that he named after a famous dancer and
22 I called him on it, he said, yeah, I named him after him, but
23 I -- I can't remember the name now.

24 Q. Okay, no worries.

25 A. I can't think of it.

—Bourque - Cross-Examination/Maher—

1 MS. QUINLAN: Okay. I don't think I have any further
2 questions.

3 THE COURT: Thank you. Cross-examination?

4 MS. MAHER: Sure.

5 CROSS-EXAMINATION

6 BY MS. MAHER:

7 Q. Good morning, Jim.

8 A. Good morning.

9 Q. I'm Laura Maher. I'm working with John Wall and we
10 represent Nappi on this matter. Can you hear me okay?

11 A. Yes.

12 Q. Okay, great. I don't have many questions for you, just
13 some follow-up. First, can you tell me a little bit about
14 yourself. Are you married, have kids?

15 A. Yes, married, three children.

16 Q. And you live locally?

17 A. Yes, Westbrook.

18 Q. And you talked a little bit about how you became involved
19 in the beverage industry, can you sort of explain that to us?

20 A. Yes, I have been around it all my life. My dad was in the
21 business. He got in and -- into it after World War II. He and
22 two other veterans started it back in 40s, late 40s, so always
23 around it, never in it. Went to school, I ended up working in
24 Massachusetts at a manufacturing outfit, and again my brother
25 was when -- when the -- the timing was right he actually was --

—Bourque - Cross-Examination/Maher—

1 should have been in my role, had he not been killed in a car
2 accident he would have been -- he would have been sitting here
3 right now.

4 Q. So that sort of changed the course of your life --

5 A. Quite a bit, yes.

6 Q. -- didn't it? Yep. And you retired from Nappi in what
7 year?

8 A. Probably 2015.

9 Q. So altogether you had about 30 plus years in the beverage
10 industry?

11 A. Yes. Yes.

12 Q. And your position at Nappi was always vice-president of
13 HR?

14 A. It was -- yes, I believe it was, yes.

15 Q. Didn't change at all during the course of your time there?

16 A. No. No.

17 Q. And you said you retired in 2015 --

18 A. I believe that.

19 Q. -- do you remember what month?

20 A. No.

21 Q. No?

22 A. I don't.

23 Q. I only ask because Ms. Tourangeau started working in 2015,
24 so your time there would have overlapped?

25 A. I remember her in some of the sales meetings, I believe.

—Bourque - Cross-Examination/Maher—

1 I think we --

2 Q. And earlier you mentioned that you knew of a Melanie
3 Larocca?

4 A. Yes.

5 Q. But she was employed before your time --

6 A. Yes.

7 Q. -- correct? And you don't have any personal information
8 concerning why she left Nappi, right?

9 A. No.

10 Q. During your time at Nappi, Nappi did have policies against
11 discrimination and sexual harassment in the workplace, correct?

12 A. Yes.

13 Q. And those policies, as far as you know, were consistent
14 with state and federal law?

15 A. Yes.

16 Q. I'm going to show you what's been premarked for
17 identification as Defendant's Exhibit 43. Do you see that?

18 A. Yes, I do.

19 Q. Do you recognize --

20 A. This looks familiar.

21 Q. -- that document?

22 A. Yes.

23 Q. What is it?

24 A. It's the Nappi Distributors employee handbook.

25 Q. Okay. And is that the hand -- does that look like the

—Bourque - Cross-Examination/Maher—

1 handbook that was in place when you were employed by Nappi?

2 A. Yes.

3 Q. Okay. And if we can just scroll through it, it is
4 28 pages long. It looks like we're drawing --

5 A. Yeah, you -- you can -- I can't seem to scroll.

6 Q. Is that you?

7 A. Yes, I thought I was -- I was trying to scroll.

8 Q. We'll scroll --

9 A. I couldn't figure it out.

10 Q. -- and if you need us to scroll let us know. You've added
11 some nice artwork.

12 A. Thank you.

13 THE COURT: Why don't you -- why don't you strike that
14 from the -- why don't you strike his markings.

15 MS. MAHER: Sure, I'll -- is this how we do that?
16 Okay. All right.

17 BY MS. MAHER:

18 Q. Try not to touch it, if you can.

19 A. I will -- I won't. I won't.

20 MS. MAHER: All right. So -- well, first, Your Honor,
21 I would like to admit this into evidence.

22 THE COURT: Any objection?

23 MS. QUINLAN: No objection, Your Honor.

24 THE COURT: It's admitted.

25 Q. All right. So we're not going to go through the entire

—Bourque - Cross-Examination/Maher—

1 handbook, it is 28 pages long, but if we could skim to page 25.

2 THE COURT: Do you want to show that to the jury?

3 MS. MAHER: Yes, please, Your Honor.

4 THE COURT: You may do so.

5 THE WITNESS: Oh, there it is.

6 BY MS. MAHER:

7 Q. So on page 25 if you scroll down we've got, as subsection
8 703, sexual and other unlawful harassment; do you recognize
9 that?

10 A. Yes. Yes.

11 Q. Okay. And does that look like the policy that was in
12 effect while you were at Nappi?

13 A. It does.

14 Q. Okay. And I'm not going to read the whole thing, but it
15 basically says Nappi is committed to providing a work
16 environment that is free from all forms of discrimination and
17 conduct that can be considered harassing, coercive, or
18 disruptive, including sexual harassment. Did I read that
19 correctly?

20 A. Yes.

21 Q. And is that what you remember about the policy when you
22 were there?

23 A. Yes.

24 Q. Okay. And it goes on to say that actions, words, jokes,
25 or comments based on an individual's sex, race, color, national

—Bourque - Cross-Examination/Maher—

1 origin, age, religion, disability, sexual orientation, or any
2 other legally protected characteristic will not be tolerated;
3 did I read that correctly?

4 A. Yes.

5 Q. Okay. And then it goes on to describe sexual harassment
6 in more detail, correct?

7 A. Yes.

8 Q. All right, and if we go to the next page. It basically
9 tells an employee what to do if they experience or witness
10 sexual or unlawful harassment in the workplace, do you see that
11 paragraph?

12 A. Yes.

13 Q. It says, if you experience or witness sexual or other
14 unlawful harassment in the workplace, report it immediately to
15 your supervisor. Is that your understanding of the policy
16 while you were at Nappi?

17 A. Yes.

18 Q. If the supervisor is unavailable or you believe it would
19 be inappropriate to contact that person, you should immediately
20 contact the department manager or any other member of
21 management. Is that what you remember as well?

22 A. Yes.

23 Q. Okay. And member of management would include yourself?

24 A. Yes.

25 Q. Or some other member of management that an employee could

—Bourque - Cross-Examination/Maher—

1 go to to report this kind of conduct?

2 A. Yes.

3 Q. And while you were there you don't recall -- while you
4 were at Nappi you don't recall anyone ever reporting this type
5 of conduct to you?

6 A. Yes, I do have one instance.

7 Q. The one you talked about earlier?

8 A. No.

9 Q. What's the other one?

10 A. One of the female employee came to me and said one of --
11 another employee at Nappi was kind of making suggestive
12 comments, I don't know exactly, but it made her uncomfortable.

13 Q. And did you investigate that?

14 A. Yes. I confronted the -- the offender and -- and -- and
15 he -- I said she doesn't want to see you there anymore so just
16 avoid her.

17 Q. And did that resolve the issue?

18 A. It did.

19 Q. And she had no further comments?

20 A. As far as I recall, none.

21 Q. Okay. All right. I think we're all done with that
22 exhibit. And I just want to be clear, this employee handbook
23 is provided to all new employees?

24 A. Yes.

25 Q. At the time of employment?

—Bourque - Cross-Examination/Maher—

1 A. Yes.

2 Q. Okay. And I'm going to show you what's been premarked for
3 identification as Defendant's Exhibit 45. Do you recognize
4 this document?

5 A. Yes. Yes.

6 Q. What is it?

7 A. It's an acknowledgment form. There's probably a signoff.
8 There you go, yeah.

9 Q. And basically it's an acknowledgment that the new employee
10 has received a copy of the handbook; is that correct?

11 A. Yes.

12 MS. MAHER: And, Your Honor, at this time I would move
13 for this to be admitted.

14 THE COURT: And which one is that?

15 MS. MAHER: Defendant's Exhibit 45.

16 THE COURT: Is there any objection to 45?

17 MS. QUINLAN: I object, Your Honor. There has been no
18 foundation laid that Ms. Tourangeau received the handbook or
19 that it's her signature on the page.

20 MS. MAHER: Your Honor, I'm simply asking him if this
21 is the form. I think we'll establish later that this is Ms.
22 Tourangeau's signature.

23 THE COURT: She -- is she denying it's -- that it's
24 her signature?

25 MS. QUINLAN: I withdraw my objection, I just asked

—Bourque - Cross-Examination/Maher—

1 her if it was hers.

2 THE COURT: All right. 45 is admitted without
3 objection.

4 MS. MAHER: Okay. And I would ask that we publish
5 that to the jury.

6 THE COURT: You may.

7 MS. MAHER: Thank you.

8 BY MS. MAHER:

9 Q. All right. And -- and so what I just want to bring your
10 attention to is that bottom paragraph. It says, I acknowledge
11 that this handbook is neither a contract of employment nor a
12 legal document -- document. I have received the handbook and I
13 understand that it is my responsibility to read and comply with
14 the policies contained in this handbook and any revisions made
15 to it.

16 Is that your understanding of the policy while you were at
17 Nappi?

18 A. Yes.

19 Q. And all new employees signed these forms?

20 A. Yes.

21 Q. When they receive a copy of the handbook?

22 A. Yes.

23 Q. Okay. And -- and Ms. Tourangeau has just let us know that
24 that is in fact her signature, but were you present when she
25 signed this document?

—Bourque - Cross-Examination/Maher—

1 A. I don't believe so.

2 Q. Okay. All right. And I also just want to show you one --
3 one more document that's been marked --

4 MS. MAHER: Your Honor, I would move to admit -- oh,
5 we already did, sorry. Your Honor, if we could pull up
6 Defendant's Exhibit 46.

7 BY MS. MAHER:

8 Q. Do you see that?

9 A. Yes. Yes.

10 Q. Okay. And can you tell me what it is?

11 A. It looks like an acknowledgement of receiving different
12 information from -- from us, Nappi Distributors.

13 Q. Is that a document that you created?

14 A. I'm not -- it's possible, I'm not sure.

15 Q. Okay. So at the top it says memo to new employee and then
16 it says from Jim Bourque?

17 A. Yes.

18 Q. That's you, correct?

19 A. It sure looks like it, yes.

20 Q. Okay. Do you have any reason to believe you did not
21 create this document?

22 A. I probably did.

23 Q. Okay. And what is the document exactly?

24 A. It is -- I think it's a -- it's -- an introduction; how to
25 contact me; injuries, that was the big one, yeah, where to go;

—Bourque - Cross-Examination/Maher—

1 and then the different policies that we had we try to --

2 Q. And --

3 A. -- make sure people had.

4 MS. MAHER: Your Honor, I would move to admit
5 Defendant's Exhibit 46.

6 THE COURT: Any objection?

7 MS. QUINLAN: No objection.

8 THE COURT: 46 is admitted.

9 BY MS. MAHER:

10 Q. And is this a document that's provided to all new hires?

11 A. Yes.

12 Q. And if --

13 MS. MAHER: Can I publish this to the jury, Your
14 Honor?

15 THE COURT: You may.

16 Q. All right. So this document is what you said it is, it's
17 sort of an introduction to Nappi and provides the employer with
18 information concerning some of Nappi's policies, correct?

19 A. Yes.

20 Q. And specifically work-related injury information and who
21 to contact for that?

22 A. Yes.

23 Q. And as part of that checklist it indicates that the
24 employee handbook and specifically the sexual harassment
25 section are highlighted; is that accurate?

—Bourque - Cross-Examination/Maher—

1 A. Yes.

2 Q. Okay. And again this form is purportedly signed by Ms.
3 Tourangeau, were you present when she signed this form?

4 A. I don't believe so.

5 Q. Okay. Now, as part of this lawsuit you're aware that Ms.
6 Tourangeau has alleged that Nappi discriminated against women
7 in the hiring practices.

8 A. Yes.

9 Q. You're not aware of any complaints of pay disparity in the
10 wine sales division while you were at Nappi; is that correct?

11 A. Say that again.

12 Q. You're not aware of any pay disparities, or complaints
13 about pay disparities rather, in the wine division while you
14 were at Nappi?

15 A. Constantly. Just pay disparity -- pay? Absolutely.
16 Nobody ever thought they were getting paid enough --

17 Q. But that wasn't --

18 A. -- for that kind of stuff, but no --

19 Q. Wasn't based on gender?

20 A. -- not in -- excuse me?

21 Q. It wasn't based on gender?

22 A. No, no.

23 Q. And you weren't involved in the decision to move from
24 three percent to two percent commission rate for wine sales,
25 were you?

—Bourque - Cross-Examination/Maher—

1 A. No.

2 Q. And you weren't -- I think you testified you weren't
3 really involved in the hiring of new wine sales representatives
4 at Nappi?

5 A. No, I -- usually I try to get -- make sure this stuff was
6 in place after the fact --

7 Q. The paperwork?

8 A. -- quite often. Yes.

9 Q. But you weren't involved in the decision whether or not to
10 hire someone?

11 A. Correct.

12 Q. And you're not the one who hired Ms. Tourangeau?

13 A. That's correct.

14 Q. Were you involved in her hiring at all?

15 A. Not that I'm aware of.

16 Q. You weren't involved in determining what her compensation
17 rate would be, correct?

18 A. Oh, no.

19 Q. You weren't involved in any rerouting processes at Nappi
20 concerning sales reps, were you?

21 A. No.

22 Q. Have you ever disqualified a candidate from employment at
23 Nappi because she was a woman?

24 A. No.

25 Q. Are you aware of anyone at Nappi ever disqualifying a

—Bourque - Redirect Examination/Quinlan—

1 candidate simply because she was a woman?

2 A. I -- no.

3 Q. Have you ever attempted to influence another manager at
4 Nappi to not hire a candidate simply because she is a woman?

5 A. No.

6 Q. And just one last question, you mentioned earlier that
7 you -- you know Frank Maiorino, correct?

8 A. Yes.

9 Q. You have never heard Frank Maiorino say that Nappi
10 shouldn't hire women because they get pregnant and Nappi has to
11 cover their leave, have you?

12 A. I don't recall that.

13 MS. MAHER: Okay. I have no further questions for
14 you, Jim, thank you.

15 THE WITNESS: Thank you.

16 THE COURT: Thank you.

17 Further questions, Ms. Quinlan?

18 MS. QUINLAN: Yes, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. QUINLAN:

21 Q. I just wanted to ask you a few follow-up questions.

22 A. Yes.

23 Q. I think you said that the policies in the handbook were
24 consistent with state and federal law; is that right?

25 A. That was the attempt, yes.

—Bourque - Redirect Examination/Quinlan—

1 Q. Okay. Do you know what state and federal law requires for
2 harassment and discrimination policies for employers?

3 A. I'm not exactly sure, but we -- our attempt was to try to
4 cover it through the handbook.

5 Q. And do you know what state and federal law requires for
6 training employees on these policies?

7 A. That I'm not aware of either.

8 Q. At these management meetings that you had, was it ever
9 discussed that they needed to hire women?

10 A. No.

11 Q. Was it ever discussed that they needed to hire female
12 sales representatives?

13 A. Say it again.

14 Q. Was it ever discussed or, you know, apparent to the
15 management team that there weren't any female sales
16 representatives and that they should probably hire one?

17 MS. MAHER: Objection, Your Honor, calls for
18 speculation.

19 THE COURT: Overruled. You may -- you may answer if
20 you can.

21 A. No.

22 BY MS. QUINLAN:

23 Q. Okay. You also said that while you were at Nappi you
24 never received any complaints about pay disparity; is that
25 right?

Bourque - Redirect Examination/Quinlan

1 A. That's correct.

2 Q. I think you kind of alluded to the fact that you did
3 receive complaints about people wanting to earn more money?

4 A. No, no, that's just I -- not making light of it, but quite
5 often. No one is satisfied with what they're making typically,
6 but that's -- but to your point, no.

7 Q. Okay. Isn't it true that when you were at Nappi
8 Distributors there weren't any female sales representatives in
9 the wine department to make a complaint to you about pay
10 disparity?

11 A. That could be. Oh, wait. Say that again?

12 Q. Isn't it true that while you were at Nappi Distributors
13 there weren't any women sales representatives to make any
14 complaints to you about pay disparity in the wine department?

15 A. Well, if it was pay disparity and gender, definitely,
16 correct.

17 Q. Okay. You referred to receiving a report of sexual
18 harassment, who did that involve?

19 A. The one that I described?

20 Q. Yeah.

21 A. It was a gal in -- a woman in our -- our graphic.

22 Q. Graphic design?

23 A. Yeah, was.

24 Q. Was it Katturah?

25 A. Carla -- no.

Bourque - Redirect Examination/Quinlan

1 Q. Jamie Colpoys?

2 A. No. Can't think of her name. She is the head of it
3 though. Kate -- Kate. Kate.

4 Q. Kate?

5 A. Kate.

6 Q. Brousseau?

7 A. Yes, thank you.

8 Q. And what did she complain to you about?

9 A. Salesman I believe he came into the office and kind of
10 making -- made her uncomfortable. I don't know if there was
11 innuendo involved or just being a -- you know, not -- not --
12 not appropriate.

13 Q. So he was making some comments to her that made her feel
14 uncomfortable?

15 A. Correct.

16 Q. And did she think that the comments were kind of sexual in
17 nature?

18 A. Yes. Yeah. That was the drift I -- excuse me, the drift
19 I got, yeah.

20 Q. And who was the sales representative that was kind of
21 making these comments?

22 A. Oh, geez. He has -- he has since retired. Bob Cormier.

23 Q. Okay. And did you also receive a complaint of some sort
24 of sexual harassment or the same sort of inappropriate comment
25 from Mary Johnson involving Dick Thomas?

Bourque - Redirect Examination/Quinlan

1 A. I don't recall.

2 Q. Do you know who Mary Johnson is?

3 A. Yes.

4 Q. Who is she?

5 A. She was like a -- I think she was on the support staff. I
6 believe she was -- it was wine administrator or wine --

7 Q. Beer administrator?

8 A. -- wine or beer. I -- I can't -- I think pricing, was it?
9 I'm not even sure.

10 Q. Sorry, I didn't mean to interrupt you.

11 A. Yeah.

12 Q. Did she report to Chris Black?

13 A. I -- yes, I believe so.

14 Q. Okay.

15 A. It had to have been beer then, yep.

16 Q. Okay. And do you know who Dick Thomas is?

17 A. Yes.

18 Q. Who is he?

19 A. He was like -- he worked -- he was a financial guy,
20 basically reported to Elmer.

21 Q. Do you know --

22 A. I can't -- go ahead.

23 Q. Do you know who Greg Hoyt is?

24 A. Yes.

25 Q. Did Greg Hoyt ever come to you and say that he had

—Bourque - Redirect Examination/Quinlan—

1 observed or learned of this comment that was made to Mary
2 Johnson that was inappropriate?

3 A. Boy, I --

4 MS. MAHER: Objection, Your Honor.

5 THE COURT: Basis?

6 MS. MAHER: He has already testified that he is
7 unaware of any -- or he cannot recall any such comment.

8 THE COURT: Overruled. This is effectively
9 cross-examination, it's a hostile witness, I'm going to allow
10 her to ask questions.

11 A. I don't recall, and if it was Greg I would have recalled.
12 He is a -- a ex-marine, great guy, and, boy, if he did I don't
13 remember.

14 BY MS. QUINLAN:

15 Q. Okay. Was there also an incident while you were at Nappi
16 Distributors involving Anthony Dibiase and a wine picker?

17 A. I believe so, yes.

18 Q. And was that an incident involving sexual harassment?

19 A. You know, it was a strange thing because he came to me and
20 said that he thought a wine selector, probably a coworker -- he
21 might have been in a supervisory role at that stage, I can't
22 remember -- was -- was accusing him of trying to, for lack of a
23 better word, put the moves on her and he was -- he -- he is a
24 married man, and his concern was if it got back to his wife,
25 you know, could be some fireworks. I -- I -- I asked him

—Bourque - Redirect Examination/Quinlan—

1 pointblank is it true and he denied it. I said if it's true
2 you're going to have to, you know, take some action, and, you
3 know, get yourself ready, if you did it then own up to it, but
4 he claimed he didn't.

5 Q. All right.

6 A. And I drilled him on that one. I said, you know, if --
7 if -- if -- if that's not what happened, fine, if it did
8 happen, look out.

9 Q. Okay. And did you --

10 A. And I never -- go ahead, excuse me.

11 Q. Sorry. Did you talk to the woman who was --

12 A. No.

13 Q. -- saying --

14 A. No.

15 Q. Okay.

16 A. No. That's what I would have expected to -- see, this
17 stuff comes to me, you don't -- you don't -- you -- you
18 don't -- I'm not really an investigator that much, but usually
19 if there is a problem people come to you, period. He is the
20 only one that came to me worried about his marriage, I never
21 heard from her.

22 Q. Okay. Do you have any understanding whether lower level
23 of management was dealing with the situation?

24 A. No idea.

25 Q. Did --

—Bourque - Redirect Examination/Quinlan—

1 A. Usually that would have ended up in my office.

2 Q. That sort of issue would have come to you?

3 A. Absolutely, yeah.

4 Q. And that was my next question, did management know that if
5 that sort of issue arose that it should come to you?

6 A. They should know that, yes.

7 Q. Okay.

8 A. They should know that.

9 Q. And is that something that you would communicate to
10 management?

11 A. Usually they -- I didn't get involved. They didn't want
12 to deal with it quite often, they would throw it at me, so,
13 yes, I believe they would -- they should have known that.

14 MS. QUINLAN: Okay. Okay. I have no further
15 questions.

16 THE WITNESS: Okay.

17 MS. QUINLAN: Thank you, Jim.

18 THE COURT: Thank you.

19 Anything further?

20 MS. MAHER: No, Your Honor, thank you.

21 THE COURT: Thank you. You may stand down, sir.

22 THE WITNESS: Thank you.

23 THE COURT: Next witness.

24 MS. QUINLAN: We call the Plaintiff Michele
25 Tourangeau.

~~Tourangeau - Direct Examination/Quinlan~~

1 THE CLERK: Please raise your right hand. Do you
2 solemnly swear that the testimony you shall give in the cause
3 now in hearing shall be the truth, the whole truth, and nothing
4 but the truth, so help you God?

5 THE WITNESS: I do.

6 THE CLERK: All right. Pull yourself right up to the
7 microphone, please state and spell your first and last names.

8 THE WITNESS: Michele, M-I-C-H-E-L-E, Tourangeau,
9 T-O-U-R-A-N-G-E-A-U.

10 DIRECT EXAMINATION

11 BY MS. QUINLAN:

12 Q. Getting myself, sorry, Michele. Okay, good morning,
13 Michele. Good morning, Michele, how are you doing?

14 A. Good morning. I'm okay. A little nervous, I have to
15 admit to feeling a little queasy, but going to breathe through
16 it.

17 Q. Same, you're in good company.

18 A. Thank you.

19 Q. So, Michele, if you could, would you tell the jury a
20 little bit about yourself? Where do you live?

21 A. I currently live in Ogunquit, Maine.

22 Q. And who do you live with there?

23 A. My husband, Timothy Pasterczyk, and our daughter, Sloan.

24 Q. And how old is your daughter?

25 A. She is six, she will be seven in April.

—Tourangeau - Direct Examination/Quinlan—

1 Q. And where are you from? Where did you grow up?

2 A. Well, my father was in the military so I was -- he was
3 stationed in Virginia when I was born, but right before I was a
4 year old we moved to Springfield, Massachusetts. Funny, Jim
5 Bourque just mentioned working there. But, yeah, we moved
6 there and that's where my father's family was initially from
7 and where he grew up.

8 Q. Okay.

9 A. And I lived there through high school, college, it was my
10 family's like primary residence probably until ten years ago or
11 so.

12 Q. Okay. And did they end up moving somewhere else or living
13 somewhere else?

14 A. No. Well, my father passed away almost 20 years ago and
15 so my mom was in the house, you know, by herself, but then she
16 ended up selling and she bought a home in Maine in Ogunquit,
17 near where we are, where she spends like the summers and --
18 this was after she retired fully, summers and some -- the fall
19 so she can be there to enjoy the area but also support Tim and
20 I with Sloan and help with her during our really busy work
21 times. And then the other time when she is in Massachusetts
22 she has an in-law apartment at my sister's home which is in
23 Hadley, Massachusetts.

24 Q. Oh, nice. So I understand that in 2014 you applied for a
25 job with Nappi Distributors --

—Tourangeau - Direct Examination/Quinlan—

1 A. Yep.

2 Q. -- is that right?

3 A. I did, yes.

4 Q. Okay. And, if you could, just kind of take the jury
5 through your employment history leading up to your employment
6 at Nappi Distributors?

7 A. Okay. Well, I started working when I was 15 years old in
8 the restaurant business. I -- my first job was as a breakfast
9 server at the motel that friends of my parents owned, so I
10 worked there Saturday and Sunday mornings. And then through
11 high school and college I worked in the restaurant business in
12 various forms, various places, hostess, server, bartender,
13 just, you know, that was my -- my kind of thing all through
14 high school.

15 I went to UMass Amherst in Amherst, Massachusetts, where I
16 got my degree in hospitality management, and during that time I
17 also worked four shifts a week at a bar/restaurant in town
18 there.

19 After well graduation -- right before graduation my
20 college boyfriend dumped me and broke my heart so my plan of
21 going with him to tour, you know, cross-country to just be kind
22 of free ended, so I just moved to Boston, Mass., just with some
23 friends just to kind of figure out my next move.

24 And I worked in the restaurant business there as a server
25 in Beacon Hill; and then I managed a restaurant in Boston for a

—Tourangeau - Direct Examination/Quinlan—

1 bit; a couple of years later moved back to western Mass.; and I
2 was a corporate trainer for the Olive Garden corporation
3 training their front of the house staff; I managed
4 restaurant -- a restaurant -- another restaurant for a while.
5 I got into hotel sales, so I was a sales manager for a couple
6 -- two different properties over the period of six or so years.

7 Then I -- and so during that time I always -- I continued
8 to bartend or serve like on the side part-time jobs so I always
9 did that as well. I like to work a lot. And in I forgot the
10 year but from there I was hired as director of events in
11 marketing at Hampshire College, which is in Amherst as well,
12 and I was there for 12 years in that role.

13 Q. And if I could just stop you right there, Michele, what
14 did you do as the director of the events and marketing?

15 A. Yeah, so I had a -- a department -- excuse me, a
16 department of four who I oversaw, and we were responsible for
17 selling the property, the campus, the facilities on campus, to
18 generate revenue for the college. I created -- they had a
19 beautiful old rustic barn that I wrote a business plan and a
20 proposal for the administration to kind of renovate it, put
21 some money into it so we could turn it into a profit center
22 where we hosted weddings. Now they host like a hundred
23 weddings a year or so, it's insane how it blew up, so that was
24 kind of my claim to fame there. I did that, and then the
25 summers the campus is vacant. There was no summer school, per

—Tourangeau - Direct Examination/Quinlan—

1 se, at all on that campus. So all the facilities full -- fell
2 under my purview to sell, generate revenue, book clients,
3 oversee the whole operation, the food service, you know, kind
4 of the whole thing, so the whole kind of support services of
5 the campus reported to me, with me, we, you know, did -- that's
6 what I was really responsible for --

7 Q. Sure.

8 A. -- for the most part. I was again, you know, the managers
9 meetings all the time because I was department head, all the
10 administration -- admin -- oh, sorry, administrative things
11 that come along, you know, with that kind of a role.

12 Q. Sure. Sure. And you might have already said this, but
13 how long were you at the college?

14 A. 12 years.

15 Q. 12 years, okay. And what was your next position? What
16 was your next --

17 A. Well, so I didn't quite finish. Just -- well, because
18 during my time at the college I started also I started to
19 become like pursue my entre -- entrepreneurial side so I
20 started my own sales -- side sales business, so I sold jewelry
21 for a while on the side. And then I created a business called
22 F & B Marketing and Promotions where I reconnected with, you
23 know, a lot of the contacts I had made in the
24 hotel/restaurant/liquor industry through those roles. So I --
25 so at first it was just me in the -- in the company that I

—Tourangeau - Direct Examination/Quinlan—

1 started where I would be -- I became a contract provider to
2 various distributors of wine, beer, and spirits in the
3 Massachusetts area. Martignetti companies was a big one, M.S.
4 Walker, Barr Hill.

5 Q. And I just want to stop you right there. You said
6 distributors, but did you mean suppliers?

7 A. So distributors, suppliers. I'm sorry if I said -- yeah,
8 distributors which would be like what Nappi is but there were
9 companies like that in Massachusetts.

10 Q. Okay.

11 A. Suppliers, which we also have at Nappi, are the -- the
12 companies like, for example, Jackson Family would be a supplier
13 who represents Kendall-Jackson wine, they sell it to Nappi,
14 Nappi sells it to the buyers. So that same role but I had
15 relationships with both the distributors and the suppliers of
16 various companies and so I became a contract provider.

17 So they would hire me to represent them at various trade
18 shows, on -- on-premise -- as Mr. Wall explained earlier,
19 on-premise and off-premise. On-premise are like restaurants,
20 hotels, anywhere you're consuming the product on property, and
21 then off-premise are like retail stores.

22 So I would do like promotions at -- at retail where people
23 would come in, I would explain the products to them, sample
24 them on the product, and help to facilitate further sale with
25 the sales reps. Trade shows, like I said I represented them,

—Tourangeau - Direct Examination/Quinlan—

1 did -- became pretty much like a part of the Martignetti team
2 because I did the most work for them.

3 So I would travel from time to time luckily with the sales
4 force and the sales managers to go to like the Nantucket Wine
5 Festival, the festival in Martha's Vineyard, and just -- you
6 know, so I was just really exposed to and got to learn a lot
7 about the kind of beverage industry from that side. So I did
8 that throughout. You know, not throughout the whole time at
9 Hampshire, but until from Hampshire College that's also when I
10 had met my now husband in that area and we, you know, just kind
11 of decided we were both ready for a change and we decided to
12 move to southern Maine, which we did, and so I left my job at
13 Hampshire College. And by that time I had hired a couple of
14 employees at my sales business that I was able to oversee from
15 Maine so I maintained that for another year or so. They would
16 do things on my company's behalf, but I was responsible for
17 them, carried the insurance, held the liability, did the
18 trainings for them, that kind of thing.

19 Q. Okay.

20 A. So --

21 Q. And so does that kind of bring us up to when you started
22 working at Nappi Distributors?

23 A. Well, when my husband and I -- he wasn't my husband then,
24 but he is now, but we moved to Maine and bought a bed and
25 breakfast in Ogunquit that we owned and operated for -- up

—Tourangeau - Direct Examination/Quinlan—

1 until actually 2019, but I did that with him full-time from
2 June of 2013 until I started at Nappi in January of 2015.

3 Q. Okay. And what made you decide to go look for a job at
4 Nappi if you had this bed and breakfast?

5 A. So we bought the inn in June and it was -- it had to
6 happen that way for us because, you know, we -- we came right
7 in right when it was time to really start making the money, and
8 that's the only way we could have done it, and we scraped
9 whatever we could to get in and so we just worked like -- you
10 know, like crazy. I don't know if -- you know, just who knows
11 about that type of business but it's seven days a week, 18-hour
12 days, through season. So did that, slowed down at the end of
13 October, and then the winters get really calm, really calm, and
14 quiet.

15 So did that, in April things start to gear up again, did
16 our second season and -- and just had a really serious talk
17 with Tim about how as much as I loved it, it was just not quite
18 enough for me.

19 The winters were just so quiet and I was not used to that
20 much downtime, and quite frankly I didn't really like it, I
21 like to be busy, and so -- and just, you know, talked about
22 maybe it would make more sense and I wanted to be the one to go
23 back out into the workforce outside of the home if he would
24 take the lead at the inn.

25 So that decision was made and then it was such a

—Tourangeau - Direct Examination/Quinlan—

1 natural -- like I knew I wanted to work for a distributor, a
2 wine distributor, because --

3 Q. And why did you want to work for a wine distributor?

4 A. Well, because right before I moved to Maine, you know, I
5 had the -- the business that I ran that really exposed me to
6 that -- you know, all of that, and knew that it was something
7 that I was really interested in doing full-time, so -- and
8 being in southern Maine it just seemed like a good idea. I
9 don't, you know, remember a lot more than that, just knowing I
10 wanted to do that, and I had made --

11 Q. How did you -- sorry, I don't mean to cut you off.

12 A. It's okay. I talk a lot, you can stop me, please.

13 Q. I'm just trying to give you a little break here so I'm --

14 A. Sorry.

15 Q. Okay. So how did you learn of the -- the position at
16 Nappi Distributors?

17 A. So when I decided I was, you know, going back to work
18 outside of the home I reached out to a colleague that I had
19 made while I was doing my sales business, Pam Gallagher, who
20 worked for a supplier Rutherford Wine Company, and I knew her
21 markets were Massachusetts and Maine, I don't know what else
22 but I think all of New England, but I let her know -- she knew
23 I had moved to Maine. I let her know I was interested and who
24 did she think would be the best company for me to look into and
25 she immediately --

—Tourangeau - Direct Examination/Quinlan—

1 MR. WALL: Objection, Your Honor, calls for hearsay
2 the portion of this testimony.

3 MS. QUINLAN: Your Honor, it's not going for the truth
4 of the matter asserted, it's going for state of mind and why
5 she applied to Nappi.

6 THE COURT: I don't think it's for the truth that it
7 was the best company or whatever else, I think it's just to
8 indicate why she applied. So if you want me to instruct the
9 jury on that, I will.

10 MR. WALL: Yes, Your Honor, please.

11 THE COURT: Ladies and gentlemen, there is a
12 difference between something being admitted for the truth of
13 something. She just mentioned, for example, that this woman
14 told her that the distributor was the best company. She is not
15 saying that it actually was the best company. She is saying
16 and you are to take it as a reference to the fact to explain
17 why she applied. Not that it's the best company, but hearing
18 that it was the best company tells you why she applied to it.

19 THE WITNESS: Okay --

20 MS. QUINLAN: Okay.

21 THE WITNESS: -- thank you.

22 BY MS. QUINLAN:

23 Q. And so after you spoke to Pam and she told you, you got to
24 go to Nappi, it's the best company, what else did she tell you?

25 A. Well, Pam --

—Tourangeau - Direct Examination/Quinlan—

1 MR. WALL: Your Honor, objection, this calls for
2 hearsay.

3 A. Okay, I don't --

4 THE COURT: Well, I have a -- I've -- I'm overruling
5 that.

6 Ladies and gentlemen, whatever response is not for the
7 truth, I just told you that. It's not for the truth of the
8 matter but to explain why she did what she did only.

9 A. So Pam --

10 THE COURT: The objection is overruled. You may
11 proceed.

12 THE WITNESS: Sorry, Your Honor.

13 MS. QUINLAN: Thank you, Your Honor.

14 A. Pam was -- worked directly with Nappi Distributors because
15 she was their supplier, so she knew people there so recommended
16 it might be a good place, and she said, you know, I'll reach
17 out to Paul Carr, who she knew obviously and was the wine
18 director at the time, to see, you know, what was going on, if
19 they might be having openings. And so she did and then let me
20 know that Paul had told her --

21 BY MS. QUINLAN:

22 Q. And let me just stop you right there. Did you call her
23 back or did she call you to let you know that she had spoken to
24 Paul?

25 A. I don't really remember how it went.

—Tourangeau - Direct Examination/Quinlan—

1 Q. Okay. And what did she tell you that she discussed with
2 Paul?

3 A. That Paul had told her it was actually really good timing
4 because they had a retirement coming up which was going to --
5 someone was getting promoted so there was -- there was going to
6 be an opening in a northern route, they were looking for sales
7 assistants, there was just different things going on. And, you
8 know, it was also good timing because they had decided they
9 really -- or he -- I don't know if it was they or he decided
10 they needed to start hiring women so it seemed like a great --
11 a great time that this had come up, so --

12 Q. So once she told you this information, what did you do
13 next?

14 A. So she connected me -- she gave me Paul's contact
15 information, I reached out to him, he asked me to send him his
16 (sic) resume, which I did.

17 Q. Okay. And after you sent him your resume, did you hear
18 back from him, did you follow up with him?

19 A. Yes. Paul got back to me pretty quickly and asked if I
20 would come in for, you know, a conversation, interview, at the
21 Nappi home office.

22 Q. And did you go in to have an interview?

23 A. I did. I went in and I met with Paul Carr, Mike Hale, and
24 Rocky DeVinney.

25 Q. And we already know who Paul is, but who is Rocky?

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1 A. Well, Rocky DeVinney was the -- I think his title was fine
2 wine sales manager. It's the job Ian Brown now has, but that
3 was Rocky's role. And then Mike Hale was a sales manager
4 mostly for the off-premise, I believe.

5 Q. Okay. And what did -- did they ask you any questions at
6 the -- this meeting?

7 A. Yeah. I mean it was an interview, so it was -- we were in
8 one of their conference rooms there and they asked me, you
9 know, typical kind of interview questions. They all had a copy
10 of my resume, we went over that. They explained to me how
11 again Rocky was going to be retiring and Ian Brown, who
12 currently had the southern sales route, was going to be moving
13 into Rocky's role. They didn't know what was happening with
14 the southern sales route, they had a northern sales route that
15 would be available as well, some sales assistants positions, so
16 we just kind of talked through that. They --

17 Q. I'm sorry, when -- what was the timing of when this
18 meeting occurred?

19 A. So it would have been probably Septemberish of 2014.

20 Q. Okay. And during this meeting did they tell you what
21 position they might be considering you for for hiring?

22 A. Well, it was -- it was just -- it was a conversation that
23 the three of them were sort of having with me in the room and
24 then I was a part of it, but they were, you know, saying well,
25 yeah, you know, Ian is leaving the south -- you know, they were

—Tourangeau - Direct Examination/Quinlan—

1 just talking about the actual opportunities that were out
2 there.

3 I think it was Paul who said -- you know, after we were
4 talking for a while, they looked at my resume, asked me
5 questions, Rocky made a comment that he was -- and I remember
6 this because it meant a lot to me, he was impressed by my
7 diverse level of experience and all the different things I had
8 done. And they -- or Paul I think said, you know, this
9 northern route most likely wouldn't work for you because first
10 of all where you live it's way up -- it's way up north but most
11 importantly it's not a big revenue-generating route so you
12 wouldn't make the money that you probably want to make I think
13 it was. And we hadn't really talked at that time at all about
14 what I was looking for, but he concluded that on his own and
15 said, you know, we won't even talk about the sales assistant's
16 positions because you're definitely overqualified for that.

17 So I mean I -- when I left the meeting it -- there wasn't
18 a specific, you know, offer on the table or anything like that,
19 it was more I felt that the meeting went really well, it was
20 nice to meet them, they said it was nice to meet me, knew they
21 had a lot of moving parts going and that somebody would be in
22 touch.

23 Q. Then --

24 A. Something else to mention, though, I just don't want to
25 lose my train of thought, but during the meeting when they were

—Tourangeau - Direct Examination/Quinlan—

1 talking about Ian Brown in the southern routes amongst
2 themselves, but I was sitting there so I heard, had said, well,
3 Ian's route in the south, you know, he makes about 85,000 so
4 that's probably a route that would be better for her. As I'm
5 sitting there listening to that I'm thinking, yeah, that would
6 work, you know, that, and my -- where the area where I live and
7 like that sounded pretty good. So I think for the most part
8 that's all, you know, that was that meeting.

9 Q. Okay. And so what did you do when you left the meeting?
10 Did you have any further contact with anybody at Nappi after
11 the meeting?

12 A. Yeah. I don't remember exactly when, but shortly
13 thereafter I sent thank you I think it was e-mails or letters,
14 I don't remember which, but to all three of them thanking them
15 for their time. And then shortly thereafter, it was within the
16 week, I was in the Rite Aid in Wells, I remember that, and my
17 phone rang and it was Paul Carr who just said he was, you know,
18 thanking me for the letter but checking in with me and said I
19 haven't heard from you, you know, and I said well, well, you
20 know, I was just kind of giving you guys a little time and I
21 did send the letter. But it was flattering because he, you
22 know, just said, well, you're not looking at any other
23 distributors, right, we don't want to lose you to anyone else.
24 And I was flattered certainly, and I just said, no, I mean I
25 really liked our conversation and was looking forward to

—Tourangeau - Direct Examination/Quinlan—

1 hearing back on what might be available. So --

2 Q. And did Paul give you any idea of, you know, whether or
3 not Nappi was still considering you for a position there?

4 A. He did. He said that they had spoken, I assumed he meant
5 the three that were in the room but had spoken and had decided
6 they wanted to offer me the southern sales route and was I
7 still interested, and I said, yeah, absolutely, that -- that
8 sounds really good, and --

9 Q. Did he have any conversation with you about what your
10 compensation would be during this call or anything like that?

11 A. I -- I don't know exactly. I just -- give me a minute to
12 just think because this is all -- but -- I mean I know we
13 definitely had a conversation about compensation, but was it
14 then. I -- I'm not absolutely positive.

15 Q. Okay. What was the next conversation that you recall
16 having with somebody at Nappi?

17 A. Well, it definitely was Paul, and it would have been
18 certainly about compensation because that's -- was important
19 obviously a piece of the puzzle. I -- you know, I had a lot of
20 questions about just the actual territory, the number of
21 accounts, things like that, but initially just wanted to -- you
22 know, I think -- well, I know in my head, because I had heard
23 them talking, you know, about what Ian made for money, in my
24 head I was sort of thinking that would be a ballpark, so we
25 talked about that. He -- he told me that --

—Tourangeau - Direct Examination/Quinlan—

1 Q. And, sorry, I just want to stop you right there. When you
2 say we talked about that, do you mean you talked about the
3 \$85,000 compensation that --

4 A. Well, we -- no, I had heard them talking about it during
5 our meeting, but about compensation I knew we had -- we were
6 going to be talking about that. And he said -- he let me know
7 that the sales reps that were already employed at Nappi were
8 all earning a three percent commission and he for my route
9 given -- or the route I would be getting -- the seasonality of
10 it all being in southern Maine, with a lot of seasonal
11 accounts, beach accounts, so on, he wanted to offer a two
12 percent commission plus a base salary in lieu of that one
13 percent so that I would have money coming in all winter and I
14 wouldn't like, quote, unquote, starve in the winter.

15 Q. And did he use that language with you specifically that --
16 so you wouldn't starve in the winter?

17 A. Yeah, that definitely was said for sure, yep.

18 Q. Okay. And did he give you any reference for why he might
19 have said that?

20 A. Oh, about the starving? Yeah, I mean he made just kind of
21 jokes that Ian working in the south, you know, in January,
22 February, when it's just so quiet made like no money, and Ian
23 joked about one of the gas stations that had become an account
24 at Pine Tree Store how he would just goof around with them
25 there and Dee, one of the server -- one of the cashiers who was

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1 working always on Thursdays when he would be in there, would
2 just give him hot dogs because she felt sorry for him. It was
3 kind of a joke, like he didn't -- he wasn't begging or anything
4 like that, but, you know, it was just kind of a joke so.

5 Q. Okay.

6 A. He literally meant so you don't starve.

7 Q. Okay. And so after Paul told you this information about
8 what the compensation structure was for all of the other sales
9 representatives and what he planned to do for you, what did you
10 think? What was your response?

11 A. It -- yeah, I said I mean it seemed to make sense to me
12 why that would be, and the idea of not starving in the winter
13 was good, I thought.

14 Q. And what about it made sense to you?

15 A. Well, that you would always -- that I would always have at
16 least some -- a paycheck all the time regardless of what month
17 it was. There wouldn't be weeks or months without a paycheck.

18 Q. Okay.

19 A. So, yeah.

20 Q. And what was your next contact with somebody at Nappi
21 Distributors?

22 A. So definitely was with Paul and --

23 Q. And do you think it was by phone or by e-mail?

24 A. We -- we had both, some phone calls and there was some
25 e-mail. But the phone call I remember was about actual

—Tourangeau - Direct Examination/Quinlan—

1 compensation because, you know, I had asked or I was asking --
2 wondering the sales route and what the sales route generated at
3 that current time because I wanted to do the math and check
4 what two percent was. And incentives, I don't know if I
5 mentioned that, but the compensation package was two percent
6 commission, base salary, plus incentive earning possibilities,
7 so that was like the package we discussed and --

8 Q. Can I just pause you right there?

9 A. Mm-hmm.

10 Q. I don't think we've talked about it yet in detail, what
11 are incentives?

12 A. Incentives are really are programs -- are programming, I
13 should say, that are created by the suppliers that Nap -- that,
14 you know, we represent as well as input from I believe Nappi
15 management, and they're programs to help promote certain
16 products and to get products out into the market. Some of them
17 are about placements, so if you place three bottles of this
18 brand or of this type within a certain timeframe you get paid
19 this much. Some of them are volume incentives, so for this
20 particular supplier or these particular brands if you reach a
21 certain goal within a certain time you get paid on that. So
22 they're -- it's an opportunity to earn money which, yeah,
23 that's what they are.

24 Q. So it's sort of like bonus money if you hit these sales
25 goals?

—Tourangeau - Direct Examination/Quinlan—

1 A. Yeah, I -- it never was referred to as bonus money, but.

2 Q. Would you say it's money that you aren't entitled to
3 unless you hit the goals that Nappi identifies?

4 A. Oh, sure, because there are, yeah, programs that not --
5 that people don't hit ever or some do, you know, so it -- it
6 all depends how.

7 Q. And what is your understanding of where that incentive
8 money that goes to the sales representatives comes from?

9 A. Well, what I -- I just assumed and thought and I -- I know
10 from talking --

11 MS. WHITE: Objection, Your Honor.

12 THE COURT: That's sustained.

13 THE WITNESS: Oh.

14 THE COURT: We're not looking for assumptions, we're
15 looking for your knowledge.

16 THE WITNESS: Okay, sorry. Go ahead.

17 BY MS. QUINLAN:

18 Q. And I understand that maybe you previously didn't know
19 where the incentive payments came from, but now do you know
20 where -- who funds the incentive payments that sales
21 representatives receive?

22 A. Yes. So when Matt Watson joined the company he was the
23 first person I had heard from that the suppliers pay 60 percent
24 of the incentive program -- programming and Nappi pays
25 40 percent.

—Tourangeau - Direct Examination/Quinlan—

1 Q. And are there some suppliers who pay a larger percentage?

2 A. I'm not sure.

3 Q. Okay. I'm actually going to just use this book because I
4 think it will somehow flow better. Okay. So, Michele, I am
5 going to show you what I have marked as Exhibit 26.

6 A. Okay.

7 Q. There we go. Have you seen this document before?

8 A. I have.

9 Q. And what is it? If you look at this first e-mail, it
10 looks like it's an e-mail from you to Paul Carr on September 9,
11 2014; is that right?

12 A. It is.

13 Q. And why were you sending Paul an e-mail?

14 A. It was in response to a phone call that Paul and I had.
15 So I was thanking him for his time, was reiterating that I was
16 going to be out of town from November 12th through the 27th so
17 wouldn't be available during that time, I could have started
18 before if he wanted me to train, and then I said I was looking
19 forward to receiving the wine portfolio information as well as
20 the compensation details offers -- offer that we had discussed
21 earlier so I could review it.

22 Q. Okay. And as we go through this document there are going
23 to be some notations on it like there are down here at the
24 bottom.

25 A. Okay.

—Tourangeau - Direct Examination/Quinlan—

1 MS. QUINLAN: I'm sorry. Your Honor, I move to admit
2 Exhibit 26.

3 THE COURT: Any objection?

4 MR. WALL: No objection, Your Honor.

5 THE COURT: 26 is admitted.

6 MS. QUINLAN: If we could publish it to the jury?

7 THE COURT: You may.

8 MS. QUINLAN: Thank you.

9 BY MS. QUINLAN:

10 Q. Okay. And so as we go through this document we're going
11 to see that there is some notations like what we see down here
12 at the bottom where it's highlighted, are these your notations
13 on the document?

14 A. Yes.

15 Q. And why did you make notations to this document?

16 A. This was a -- I believe if this is the copy.

17 Q. Do you want me to show you the whole thing so that --

18 A. Maybe, but I -- I know why, we just have -- yeah. So,
19 yeah, this is the e-mail interaction between Paul Carr and
20 myself. Later on when Matt Watson was with the company at one
21 point we had talked about my salary and he had asked me -- he
22 wasn't sure -- or Christine Fox wasn't exactly sure, you know,
23 where -- why I was getting a salary or how it -- how it came
24 about, so I explained to him it was part of my compensation
25 negotiation offer from Paul, and he asked me to share with him

—Tourangeau - Direct Examination/Quinlan—

1 the e-mail and so I did, and so that's where this would have
2 come from was just some just highlights and such that I had
3 made prior to sending it to him.

4 Q. Okay. And then looking at page two of Exhibit 26. I'm
5 just going to Zoom in right here at this e-mail that you
6 received from Paul Carr on September 18th of 2014. Do you
7 recall receiving that e-mail from Paul?

8 A. Yes.

9 Q. And what was he telling you in that e-mail?

10 A. He was telling me that he -- I had asked for a company
11 info packet to be sent out, and he had -- he was saying the
12 person who would do that had been out so far during the week so
13 he would get it to me. As far as compensation, he said he
14 promised I would be making at least 60,000 in my first year
15 with a combination of base pay, commissions, and incentives.
16 He couldn't get me a list of the accounts that I had asked for
17 because no one in sales knew that he had hired me and he wanted
18 to keep it that way until we got closer to December 1st because
19 other people wanted that route and he didn't have the other
20 pieces together for whatever changes he was going to make,
21 so -- and he would talk to me later today.

22 Q. Okay. Is there any reason why he couldn't provide you,
23 the person who was going to be working the route, with the
24 information about the accounts that you would have on that
25 route while maintaining confidentiality so others didn't learn?

—Tourangeau - Direct Examination/Quinlan—

1 A. Well, I would say because he would have -- well, probably
2 two things. He would have had to ask --

3 MR. WALL: Your Honor, I'm just objecting, this sounds
4 like speculation to me.

5 THE COURT: Right, this is -- we're not looking for
6 what you're guessing, we don't want speculation.

7 THE WITNESS: Okay.

8 THE COURT: We want what you know.

9 THE WITNESS: Okay.

10 THE COURT: All right. If you know it, you can
11 testify to it. If you don't know it, you can't.

12 BY MS. QUINLAN:

13 Q. Okay, and I'll just move along to the next e-mail here.
14 On September 18th of 2014 you responded to Paul about the offer
15 where he said he could guarantee you that you would be making
16 60,000 in your first year. What was your response to him about
17 that?

18 A. So I said I understood keeping it quiet, fine. If we can
19 talk later, that would be great, because when we had spoken the
20 week prior I was sure that he had said a guarantee of 65,000 in
21 the first year with the probability of making 75 to 80 if I hit
22 above average incentives. I asked him about a car allowance
23 because we hadn't talked about that. I wanted to see how that
24 fit into the compensation package so that we -- to be sure we
25 had a clear understanding and were on the same page.

—Tourangeau - Direct Examination/Quinlan—

1 Q. Okay. And then Paul responded to you on September 14th of
2 2017. What did he tell you about your -- your compensation?

3 A. So he asked me to give him a call that afternoon if I
4 could. He said he promised me 60,000 but it was so he would
5 get it through the owner who thinks every wine salesperson
6 makes too much money, you will -- you will make much more than
7 that because that 60,000 was predicted on a base salary of
8 \$22,491, commission of two percent on sales, and \$5,000 on
9 incentives. You should make much more on incentives because
10 Ian did more like \$13,000 in incentives with four months to go
11 for the rest of the year. The route slows down particularly in
12 the early winter months so the base would work out to \$433 a
13 week so you don't starve if you're not good at stashing away.
14 He let me know I get a van, free gas, free maintenance, and
15 insurance on the vehicle.

16 Q. Okay. And since you have been working at Nappi did you
17 experience periods where your only income was, during the slow
18 times, that salary pay?

19 A. Yeah. Well, how it all -- you know, I don't have a
20 paycheck in front of me that summarizes it, but there were --
21 there are still and there were weeks where my take home pay
22 would be under \$400.

23 Q. Okay. And then I just want to move along to this response
24 here from you on September 18th. What was your concern with
25 the information -- or were you concerned with the information

—Tourangeau - Direct Examination/Quinlan—

1 that he provided you about your compensation?

2 A. So I was questioning the \$433 a week and are you thinking
3 that I would need to live on that from December until April
4 because for me that -- let me see. I want to say what's here.
5 It concerned me because I had bills to pay and that wasn't very
6 much money.

7 Q. Well, was the concern how long was that going to last for
8 and was it really going to be that much?

9 A. Right. And I would have been starting right in the winter
10 when this would have been the case, so I wanted definitely an
11 idea of what my sales could be during the winter months so that
12 I could calculate what two percent of that would be, so -- and
13 I figured out on my own based on the numbers that he had given
14 me with the base salary of 22,491, two percent -- oh, I figured
15 out because -- yeah, the dollar amount, the two percent
16 commission, I figured out that the route he was planning to
17 give me would currently generate about 1.6 million, I asked is
18 that right and can you give me an idea of the opportunity there
19 would be in the territory.

20 Q. Okay. And then looking at his response -- oh, did you
21 also want to know about the benefits, had he discussed any of
22 that with you?

23 A. Yes. So -- so this -- this what I'm looking at right now
24 is not a continuation of what I was first looking at, this
25 seems like a different --

Tourangeau - Direct Examination/Quinlan

1 Q. No, it is.

2 A. Okay, let me just see. Could you give me -- but these --
3 okay, wait a second, I'm sorry. This was his response. I was
4 summarizing my questions.

5 Q. No, this is your question to him.

6 A. Okay, wait a minute.

7 Q. Take your time.

8 A. Yes, thank you.

9 Q. Yeah.

10 A. Okay. Can you -- I'm ready to move to the next if you are
11 ready. Okay, so --

12 Q. And my question to you was just did you also want to
13 inquire about what your benefits would be, what was --

14 A. Yeah, and that was another question I had asked, an idea
15 of benefits, health insurance, when I would be able to enroll,
16 vacation time, stuff like that.

17 Q. Okay. And he provided to you that you were correct, it
18 was 1.6 million in roughly sales each year, right?

19 A. He does confirm that, yes.

20 Q. Okay.

21 A. He said -- because this is an e-mail from him on
22 September 20th, so yes.

23 Q. And then if we just look at the sentence after
24 1.6 million --

25 A. Right.

—Tourangeau - Direct Examination/Quinlan—

1 Q. -- what did he say there?

2 A. So your route does generate around 1.6 million. That's
3 not saying you can't do more than Ian. You might have an
4 advantage being a woman selling wine to account buyers being
5 men. Places are closed in the winter. I don't have what the
6 territory does. He -- he gave me the towns.

7 Q. And I just want to stop you right there. Did you have any
8 understanding of what he meant by, you might do better than Ian
9 because you're a woman selling to men?

10 A. Selling to men? Because women -- yeah, because women
11 selling to men I could charm them, I could, you know, just --
12 I'm not sure how to say it, but use -- use -- how do I say it?
13 I don't know.

14 Q. Okay. And I understand that after 90 days you would be
15 entitled to your health benefits and your 401K; is that right?

16 A. Yes.

17 Q. Okay. And did you get health benefits and your 401K after
18 90 days?

19 A. I did.

20 Q. Okay. And then he also told you about vacation?

21 A. Yes. He --

22 Q. What was the vacation that Paul communicated to you that
23 you would be entitled to?

24 A. He said the first year doesn't come with any vacation
25 until you've served a year, then you get one week paid

—Tourangeau - Direct Examination/Quinlan—

1 vacation, and after two years you get two weeks paid vacation,
2 after seven years you get three weeks paid vacation, sorry, I
3 don't have control over company policy. I want you to start on
4 December 1st without any reservations about your job. If
5 anything mentioned above changes your mind about taking the
6 position, please let me know now, but I think -- please let me
7 know now, but I think you will do quite well and will be happy
8 working for Nappi.

9 Q. Okay. And you responded that you were happy to accept the
10 position and just wanted clarity on what the compensation
11 package would be, right?

12 A. Yes, I did, and I refer to in this e-mail on
13 September 23rd a conversation I had had with Mike Hale. It
14 says Mike, but I know it was Mike Hale. And I had a good grasp
15 on things after that, I was confident that I would be a strong
16 asset, and I promised that I would give them 110 percent of my
17 effort, my skills, my expertise, so -- and I did then just
18 express to him that, you know, I was very excited about the
19 job, I was looking forward to it, I didn't have reservations,
20 but I wanted to be honest and transparent and let him know that
21 as someone who had been working in the professional industry
22 for over 20 years it was disappointing to be offered just one
23 week of vacation after working even a full year, the norm is a
24 minimum of two weeks, and that was what I was hoping for and
25 expecting. You know, I just wanted to -- to say that and, you

—Tourangeau - Direct Examination/Quinlan—

1 know, I -- I reiterate there are many benefits working for the
2 company, I wasn't going to let the vacation issue deter me, but
3 it was disappointing, and I was surprised by it.

4 Q. Okay. And then I'm going to show you -- oh, I think you
5 said down below that you were waiting for the official offer
6 letter; is that right?

7 A. Yeah. I hadn't heard since that -- that was the last
8 interaction we had at some point in September, so then I sent
9 him a message I think it was a week later that was joking
10 haven't heard from you, do I still have a job, ha ha. It was
11 -- I hadn't received an offer letter from HR, so -- I assumed
12 that's who it would come from, and so I asked about that. He
13 responded back on October 2nd and said HR doesn't have anything
14 to do with hiring, I will send you a hiring letter on Nappi
15 letterhead today, have a great weekend.

16 Q. Okay. And then I'm going to show you is this the offer
17 letter that you received?

18 A. So it looks like on October 2nd -- well, not looks like,
19 he did on October -- on October 2nd --

20 MR. WALL: Your Honor, I just want to object. This
21 hasn't been offered yet. I'm not planning on objecting, but
22 just for the purposes of keeping things straight --

23 MS. QUINLAN: This was all part of Exhibit 26.

24 MR. WALL: Oh, I'm sorry, is it part of? I apologize,
25 I thought this was a separate exhibit. My bad.

—Tourangeau - Direct Examination/Quinlan—

1 MS. QUINLAN: That's okay.

2 A. Yes, so this is the offer letter that Paul sent to me.
3 It's a copy of that. Is everyone seeing this or just me,
4 should I read it?

5 BY MS. QUINLAN:

6 Q. Yep. No, everybody can see it. That's fine.

7 A. No, I just didn't know if I needed to read it or.

8 Q. Okay. And then this here is the payroll department status
9 form?

10 A. Yes, so this is --

11 Q. And does this -- if we look over here, does this show what
12 your compensation package was?

13 A. Yeah, it lists the date of hire, it says salary commission
14 \$432.52 a week, base plus two percent commission, plus
15 incentives.

16 Q. Okay. And at the bottom that's Paul Carr, right?

17 A. That's Paul Carr's signature.

18 Q. Okay. And then this is all your information right here?

19 A. Yeah, that's my name, my address, what the title of the
20 position would be --

21 Q. Okay. And do you know --

22 A. -- and --

23 Q. -- what this notation is here?

24 A. Yeah, that is -- MA is Michelle Apt who is the CFO. She
25 was then and she currently still is the CFO at Nappi.

Tourangeau - Direct Examination/Quinlan

1 Q. Okay. And I see here that it says date of hire
2 January 5th of 2015?

3 A. 5th, 2015.

4 Q. I understand that you were supposed to start in December
5 of 2014, was there a reason why you weren't able to?

6 A. Yes, so I -- the week the vacation that I was going on
7 prior to starting I broke my ankle while I was on vacation and
8 so I let them know, and so we pushed my start date back because
9 I needed to be cleared before I could start work.

10 Q. Okay. And I understand that you had to go through a
11 physical before you could start working; is that right?

12 A. Yes.

13 Q. And did you pass the physical?

14 A. I did.

15 Q. Okay.

16 THE COURT: Is this a good time to break?

17 MS. QUINLAN: Sure, yeah.

18 THE COURT: Ladies and gentlemen, we're going to take
19 our second break. Don't discuss the case and we'll see you
20 back here in about 15 or 20 minutes.

21 THE CLERK: All rise, jury exiting.

22 (Jury exited. Time noted: 12:34 p.m.)

23 THE COURT: Court will stand in recess.

24 (A break was taken from 12:34 p.m. to 12:57 p.m.)

25 THE COURT: Would you bring the jury in, please.

~~Tourangeau - Direct Examination/Quinlan~~

1 (Jury entered. Time noted: 12:58 p.m.)

2 THE COURT: You may be seated. Thank you.

3 Attorney Quinlan.

4 MS. QUINLAN: Thank you, Your Honor.

5 BY MS. QUINLAN:

6 Q. So, Michele, I think when we left off we were talking
7 about some of the correspondence that you had with Paul Carr
8 before you started working at Nappi about your compensation and
9 the benefits. Did you also have a conversation with anybody
10 else at -- sorry, with anybody else at Nappi Distributors that
11 was in management?

12 A. Mike Hale.

13 Q. Okay. And what did you discuss with Mike Hale?

14 A. Paul had let him know -- shared with him my questions and
15 so Mike sent me an e-mail and just said, you know, give him a
16 call and we could talk about some of his questions. Some of my
17 questions.

18 Q. And did Mike also -- did Mike also send you an e-mail that
19 had your -- the accounts that you might be receiving as part of
20 your route?

21 A. He did. He -- he sent me an e-mail and said they're not
22 really in any specific order or by geography, but it's -- yeah.

23 THE COURT: Do you have the headset?

24 JUROR: Yes, I do, please.

25 THE COURT: Thank you. We don't want -- we want you

—Tourangeau - Direct Examination/Quinlan—

1 to be able to hear, sir, so if we don't get the headset to you,
2 let us know. It's vital that you hear everything.

3 JUROR: Thank you.

4 THE COURT: Thank you, sir.

5 BY MS. QUINLAN:

6 Q. Okay. Michele, I'm showing you what I have marked as --
7 no, I'm not, not yet. Okay, I'm showing you what I have marked
8 as Plaintiff's Exhibit 27, and it's a series of documents that
9 I'll just go through to make sure that you have seen.

10 Are these the e-mail communications that you had with Mike
11 Hale following your conversations with Paul Carr about your
12 compensation?

13 A. Yes, they are.

14 MS. QUINLAN: Okay. Your Honor, I move to admit
15 Exhibit 27.

16 THE COURT: Any objection to 27?

17 MR. WALL: No objection, Your Honor.

18 THE COURT: It's admitted.

19 Q. Okay. And then I would also like to show you what I have
20 marked as Exhibit 28, and it's an e-mail from Mike Carr -- Mike
21 Hale to you on September 22, 2014, and he said that he is
22 providing you with a list of your accounts in your route?

23 A. Yes.

24 Q. And it looks like you reviewed those routes; is that
25 correct?

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1 A. Yes.

2 Q. And did you have an account -- question about some
3 accounts that you did not see in your route?

4 A. Yes. I asked him about a few restaurants I knew about in
5 Kennebunk, and I didn't see them on my account list so I asked
6 if there was another Nappi rep in that area, and if not then
7 they weren't on Nappi's purview and I would go after them.

8 Q. And what did Mike Hale say to you in response?

9 A. There is another sales rep in Kennebunkport, his name is
10 Terry O'Brien, he is a great salesman, doesn't always play
11 well, keep these accounts just between him and I.

12 Q. Okay. And then are these the accounts he sent you?

13 A. I think so. I mean, yes, they're -- it's just hard to
14 read, you know, who -- which accounts they actually are.

15 Q. Is that because of the formatting?

16 A. I think so.

17 Q. Okay.

18 MR. WALL: Your Honor, again I -- I -- are we talking
19 about Exhibit 28 at this point?

20 MS. QUINLAN: Yes.

21 MR. WALL: I don't think it's in evidence yet. I
22 don't have an objection to it's admission, I just want to see
23 if we can, you know, before she talks about it have it admitted
24 first, that's all.

25 MS. QUINLAN: Your Honor, I move to admit Exhibit 28.

—Tourangeau - Direct Examination/Quinlan—

1 THE COURT: Any objection?

2 MR. WALL: No objection.

3 THE COURT: 28 is admitted. Thank you, Mr. Wall.

4 MS. QUINLAN: Okay. And then I would just like to go
5 to the last page here which I would like to publish to the
6 jury?

7 THE COURT: You may.

8 BY MS. QUINLAN:

9 Q. It says here at the bottom that you had 128 accounts. Did
10 you start with 128 accounts?

11 A. No, I don't believe so.

12 Q. Okay. And then I would like to show you what I have
13 marked as Exhibit 28-A, do you recall seeing this document?

14 A. Yes.

15 Q. What is this document?

16 A. This is a document Ian Brown gave me when I first started
17 at -- before I started -- well, I had just started and I
18 trained with him for the first two weeks, so this was a -- an
19 overview of my active accounts.

20 MS. QUINLAN: Okay. Your Honor, I move to admit
21 Exhibit 28-A.

22 THE COURT: Any objection to 28-A?

23 MR. WALL: No objection, Your Honor.

24 THE COURT: 28-A is admitted.

25 Q. Okay. And if we go through and add up the accounts that

—Tourangeau - Direct Examination/Quinlan—

1 are listed in this exhibit, do you have an idea of how many
2 accounts there are in what Ian provided you would be part of --
3 part of your route?

4 A. How many are in that exhibit?

5 Q. Yeah.

6 A. I don't want to -- I think, I believe it was somewhere in
7 the 80 range, but I would have to count them to be accurate.

8 Q. And does 87 sound accurate to you?

9 A. It does.

10 Q. Okay. Next I'm showing you what I have marked as
11 Exhibit 29. Have you seen this document before?

12 A. Yes.

13 Q. And what is it?

14 A. It is a report from February 28th of 2015, which is the
15 last day of February, a report that shows --

16 Q. And hang on.

17 A. I'm sorry.

18 MS. QUINLAN: That's okay. And, Your Honor, I move to
19 admit Exhibit 29.

20 THE COURT: Any objection?

21 MR. WALL: No objection, Your Honor.

22 THE COURT: 29 is admitted.

23 MS. QUINLAN: And I would like to publish to the jury.

24 THE COURT: You may.

25 BY MS. QUINLAN:

—Tourangeau - Direct Examination/Quinlan—

1 Q. Okay. So if we look at Exhibit 29 here -- and I'm going
2 to Zoom in, this is a little out of focus -- it looks like this
3 first list is of your on-premise accounts that you had in 20 --
4 February of 2015; is that right?

5 A. Yes.

6 Q. Okay. And then it looks like at the bottom it starts with
7 your off-premise accounts?

8 A. Yes.

9 Q. Is that right?

10 A. It is.

11 Q. Are these all of the accounts that you have -- had at the
12 time?

13 A. These -- these accounts would have shown any account that
14 had sales for the year at that point, so any account that would
15 have been closed currently would most likely not be on this
16 report because they had no sales yet for that current year.

17 Q. Okay. So in February of 2014 this document shows how many
18 accounts you had actually doing business and placing orders?

19 A. In 2015 you mean?

20 Q. Yes.

21 A. Yes, exactly.

22 Q. Okay. Okay. And so it looks like by my count that you
23 had about 31 on-premise accounts that were currently ordering
24 from you; is that right?

25 A. Yes.

—Tourangeau - Direct Examination/Quinlan—

1 Q. Okay. And it looks like you had by my count 26 off-
2 premise accounts ordering from you at the time; is that right?

3 A. Yes.

4 Q. Okay. And then if we slide over here where it says year
5 '15 February, year '14 February, and it shows your off-premise
6 sales, and it looks like in February of 2015 you did 69,486 and
7 in this number next to it in 2014 where it says 65,724, what
8 does that number represent?

9 A. So that is they're dollars. This -- this particular --
10 these particular columns are dollars, and it would show
11 year-to-date through -- so January and February totals
12 year-to-date for each account what the total sales were.

13 Q. Okay. And does it show that you had done more in sales
14 than what those accounts did for sales in the year prior?

15 A. Yes, that's what it looks like here.

16 Q. Okay. And then same thing for the on-premise accounts, if
17 we look down here for the total for year February of 2015 --

18 A. Yes, yes.

19 Q. -- compared to February of 2014 it looks like you did
20 better in sales for those accounts that year, right?

21 A. Yeah, because if you look to the right it's 31 percent
22 higher.

23 Q. You did 31 percent more --

24 A. That's what this says, yes.

25 Q. -- in sales? Okay. Okay. Can you tell us a bit about

—Tourangeau - Direct Examination/Quinlan—

1 what it is you do as a sales representative for the wine
2 department at Nappi Distributors?

3 A. Sure. So I have customers obviously, and I see them
4 weekly, biweekly, talk to them whenever they need things. So I
5 will go to their places of business and talk to them about
6 either taking -- you know, see what they want to order. It's
7 different all the time depending on the type of account, but
8 for restaurants my on-premise, for example, you are taking
9 their order, you are keeping an eye on inventory for them, if
10 something that they have on their wine list is getting low you
11 need to give them a heads up on that so they can either order
12 more or make a decision to make a replacement. If they --
13 if -- if I suggest or if they want to make a replacement, I
14 present them with some comparable ideas. At time -- sometimes
15 I will then taste them, have them taste those actual products
16 to see if they will work for them, so that.

17 And then I -- there are many of my customers and
18 restaurants who I assist them with their actual wine list
19 production, so I help them with that getting it laid out, price
20 it out. I do a lot of inventory spreadsheets for customers
21 that helps them maintain their pars.

22 Retail I same thing, will meet with the customer to take
23 the order. I have some accounts where I go in every week and
24 generate the order, then meet with the buyer or the owner to
25 review it. Some accounts that I have worked with for a while

—Tourangeau - Direct Examination/Quinlan—

1 just will say -- they don't have to review it with them every
2 week, I just send them a total of what's coming in. It's
3 different but it's, you know, constant working with folks.

4 In the say like April through October but mostly July --
5 June -- end of June -- the summer months, end of June through
6 the beginning of September, it's operations, operations,
7 operations. It's just main -- keeping -- you're just running
8 constantly, getting orders in.

9 Whenever there are, you know, mistakes that happen --
10 Nick's sitting out there, mistakes never happen. Sorry. It
11 is -- yeah, so you are -- if things don't make the truck, you
12 are making sure the customers get them. If something is
13 mispicked and they get the wrong product, you have to fix that.
14 If you key something in incorrectly, you need to fix that. So
15 it's -- it's a lot of operations. It's a lot of service. It's
16 a lot of running around.

17 You're doing a lot of merchandising, restocking in retail
18 before you can even begin to generate an order. You're, you
19 know, putting things away, making sure things are lined up
20 properly in the right spaces, and --

21 Q. Okay.

22 A. -- so that really -- summer is just running, running,
23 running. And your customers are really busy as well because
24 they're managing their businesses, so they don't want to spend
25 a lot of time with you, which works out well because you're so

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1 busy taking care of their needs.

2 Then towards the end of the season things will start to
3 calm down, get a little bit of breathing room, and then for me
4 I start gearing up really in January. Because of all the
5 restaurants, for example, on-premise accounts that I have if --
6 the first couple of years if you're not used to it you get
7 nailed by, you know, March-April, suddenly everyone is back and
8 wants to talk to you and get --

9 Q. And so I kind of want to pause you right there.

10 A. Thank you.

11 Q. So is there something that's unique about your route that
12 causes some variation to what you have to do depending on the
13 time of year?

14 A. Well, right, because I'm in a seasonal area in southern
15 Maine, so that's really what I'm describing. People if they --
16 if they're closing their businesses they will either go on a
17 longer vacation or they check out for a while, so they're not
18 always available to -- or want to even look at you or talk to
19 you until they're ready to get back in that mode. So a lot
20 happens at once or it can happen at once if you're not
21 strategic about it and try to get ahead of it, and so I've
22 learned to really do that.

23 So I, you know, now being February I have a good reference
24 because I'm living it right now, but I'm already -- yeah, just
25 busy. Friday I had three presentations just this Friday,

—Tourangeau - Direct Examination/Quinlan—

1 Friday night I was at a customer's house with him presenting 12
2 wines to him and his son for when they open beginning of April.
3 And I wanted to get ahead of that because they're in town, why
4 not get it done now. So there is a lot of work to get the sale
5 accomplished when they reopen.

6 The retail is similar in certain independent retail
7 accounts. Independent meaning it's, you know, family who owns
8 them or it's specific one owner, it's not a chain like a
9 grocery store or a Walgreens or something like that. So the
10 independents some people you're meeting with doing the same
11 thing, presenting them on different products, different
12 regions. I have some fine wine shops that really want to dig
13 into -- for example, I just did a tasting for, you know, red
14 wines priced between 15 and \$25 from Bordeaux and Burgundy so
15 we concentrated on that. So I have -- what I like about my
16 accounts specifically is there is such a range of different
17 types of customers, different types of wines, different levels
18 of -- you know, so we have a portfolio of almost 3,000 SCUs of
19 wine and my route base, my customer base, allows me to touch on
20 pretty much all of them. I don't know, is that good?

21 Q. Yeah. And is there -- is one of the goals of Nappi, or
22 the goals for you, to get Nappi products -- Nappi wine products
23 on the menu by the bottle, by the glass, is doing that
24 something that you're aiming to do?

25 A. Well, you want as many by the glass pours as you can get

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1 because that equals higher sales, you're selling more. You
2 know, the customer is buying more wine that they're selling by
3 the glass generally than what they're selling by the bottle, so
4 that is a huge kind of on-premise accomplishment. Where you
5 have a restaurant that might have six glass pours, if you get
6 two of them, three of them, sometimes the -- all of them or
7 four, you know, it's a -- you feel great about it.

8 If it's a restaurant that your company hasn't done
9 business with or you -- they switched buyers, they're no longer
10 buying from you, you -- you keep on them and you keep meeting
11 with them and you keep showing up and you keep, and then when
12 you -- when you crack them and you finally get that it feels
13 like you just won the lottery, like it's such a sense of
14 accomplishment, even though -- yeah, so that's just like an
15 on-premise kind of feeling.

16 If you look at the sales from that all the time it
17 doesn't -- you might sell more in a larger retail account, but
18 the reward doing that is really gratifying for me.

19 Q. And is there a lot of work that goes into getting those
20 items from Nappi on the menu by the bottle, by the glass,
21 before you actually make that sale?

22 A. Well, right, yeah, and I was trying to touch on that a
23 little bit about, you know, you present -- you do a
24 presentation first. I do -- I use our program SevenFifty to
25 create a PDF, excuse me, that will show various options and

—Tourangeau - Direct Examination/Quinlan—

1 price points of things that I know would suit their list.
2 We'll review it with the customer. Sometimes they'll say, oh,
3 this all looks great, can we taste them, that's great;
4 sometimes they'll say, no, I'm looking for more for this region
5 or that, so you go back to the drawing board. So that's a
6 process back and forth and then you actually --

7 Q. And does it require some persistence on your end?

8 A. I'm sorry, some what?

9 Q. Sorry, does it require some persistence on your end?

10 A. Absolutely.

11 Q. Okay. So if you would just tell us how that first month
12 went when you started working as a sales representative at
13 Nappi?

14 A. Okay, yeah, so it was January so it was a quieter time.
15 Ian Brown, who was -- I was going to be reporting to, was also
16 training me. So I went out with him in his car for the first
17 two weeks, and we saw the accounts that were open, met the
18 buyers. He drove me by some of the accounts that weren't quite
19 open yet. I met other sales reps, attended some sales
20 meetings, started to learn the processes at Nappi and who you
21 see for what, if you need, you know, some sort of
22 administrative support or shelf talkers or things like that,
23 learning all of that. How the invoicing works. How the
24 warehouse works. Did that.

25 Ian talked to me quite a bit about the incentive program

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1 during that time and encouraged me, if I could, to sit down
2 with John Lambert who was one of our senior, I guess,
3 off-premise sales reps who Ian had said was just incredible at
4 the incentives and really knew how to work the programming and
5 he thought he could be helpful, so I spent some time with John
6 on that.

7 Q. And so things seemed pretty good that first month?

8 A. Yeah, it was just, yeah, just.

9 Q. Getting up to speed?

10 A. Trying to get up to speed, knowing that I hadn't met
11 nearly, you know, the amount of customers I was going to meet,
12 but it was a good way to start getting acclimated.

13 Q. Okay. And then how was the next month, February of 2015?

14 A. So February it was -- it was good. I mean my real only
15 take away memory of that is when before I had started I let
16 Paul know that my cousin was getting married in Florida, in
17 southern Florida, so I was going to have to take four to five
18 days off, and I understood I wasn't going to get paid for it
19 because I didn't earn any vacation yet. So did do that, was
20 away.

21 And I think Dan -- Attorney Quinlan mentioned Ian, who was
22 covering for me, his wife was pregnant and she went into labor
23 sooner than expected, so he did reach out to me, let me know
24 that, and that he -- you know, I was going to have to kind of
25 manage things from my end where I could. He told me if I felt

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1 I needed help in some way I could reach out to Terry O'Brien
2 who was another sales rep. I -- I didn't, you know, I didn't
3 need him to go -- or I didn't -- yeah, so I didn't. I didn't
4 really know what I would ask him to do. So I took phone calls
5 and answered e-mails and texts and placed some orders and such
6 while I was away.

7 Q. Okay. And I just want to pause you right there and show
8 you what I have marked as Plaintiff's Exhibit 86.

9 A. Okay.

10 Q. And it looks like this is text message from Ian Brown and
11 you're responding; is that right?

12 A. Yes.

13 Q. Are these the text messages that you had with Ian Brown
14 over your vacation and when you returned from vacation?

15 A. Yes.

16 MS. QUINLAN: Okay. Your Honor, I move to admit
17 Exhibit 20 -- sorry, 86.

18 THE COURT: Any objection?

19 MR. WALL: Only that the first page, Your Honor,
20 doesn't have anything to do with this topic so.

21 MS. QUINLAN: I'll move to admit pages two
22 through seven.

23 MR. WALL: I have no objection to two through seven,
24 Your Honor.

25 THE COURT: Pages two through seven of 86 are

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1 admitted.

2 BY MS. QUINLAN:

3 Q. Okay. So I understand I think you just told me that you
4 went on vacation February of 2015, was that a paid vacation or
5 an unpaid vacation?

6 A. Unpaid vacation.

7 Q. Okay. And you had told management about that before you
8 started at Nappi?

9 A. I did.

10 Q. What were you going on vacation for?

11 A. My cousin's wedding.

12 Q. Okay. And when you returned from your vacation, did you
13 have any conversation with anybody at management about the work
14 that you did while you had this unpaid vacation?

15 A. Yeah, I -- I -- I had seen Paul Carr at the office when I
16 was back and he asked how vacation was; I told him it was
17 great, said I -- you know, I ended up working the whole time,
18 you know, throughout and without pay and, you know, it was kind
19 of, yeah, so I -- I said that to him; and he said yeah, I had
20 heard that, that's a bummer. So he knew that had happened, but
21 that was the end of that.

22 Q. Okay. Did you end up getting paid?

23 A. I did not.

24 Q. Okay. Was there a time when you were trying to take a
25 babymoon at Nappi? Sorry, let me hold off on that. I just got

—Tourangeau - Direct Examination/Quinlan—

1 ahead of myself a bit.

2 So after you had this conversation with Paul Carr and not
3 being paid while working through your vacation time, how was
4 the next year at Nappi?

5 A. I -- fine, I think. I was just -- yeah, just doing my
6 thing, working, learning more and more about my route.

7 Q. Okay.

8 A. I'm not sure specifically.

9 Q. And was there a time when you had an awkward interaction
10 with a customer?

11 MR. WALL: Objection, Your Honor.

12 THE COURT: Basis?

13 MR. WALL: It's leading.

14 THE COURT: Overruled.

15 A. Okay. So, yeah, so during -- yeah, so for the next year I
16 went about my business as I explained already the types of
17 things I was doing. I had quite a few supplier work-withs
18 during that time that first year. Supplier work-withs would
19 mean a supplier representative would be in our market or in our
20 area for a day or a couple of days and then sales reps would be
21 assigned to keep them with you for the day, bring them to
22 accounts and try to help them sell their product. So I did
23 quite a number of those during that time.

24 During, yeah, one of them I had visited an account in Cape
25 Porpoise called -- Cape Porpoise Kitchen, thank you, and I had

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1 a supplier with me so we did a presentation there, and there
2 was a buyer named Bill Barksdale who, you know, I had been
3 speaking with and taking his orders and such and, yeah, he
4 was -- he -- it started to get a little awkward with him.

5 MR. WALL: Your Honor, I just move to strike any
6 testimony regarding this. I believe you've already ruled that
7 this issue is not in the case, and so if she is leading into
8 discussions with Mr. Barksdale we would object as both hearsay
9 and excluded from the case.

10 MS. QUINLAN: Your Honor, could we sidebar?

11 THE COURT: Yes.

12 (Sidebar conference.)

13 THE COURT: Where we going with this?

14 MS. QUINLAN: I understand that we have no claim for
15 the hostile work environment --

16 THE COURT: Don't -- you don't need -- we have got the
17 white noise on.

18 MS. QUINLAN: Oh, okay.

19 THE COURT: I can hardly hear you.

20 MS. QUINLAN: Okay, sorry. I understand that we have
21 no claim for the hostile work environment, but in terms of how
22 they responded to her complaint and how they just took the
23 accounts away from her, took his word for what it was --

24 THE COURT: How does that relate to?

25 MS. QUINLAN: It goes to the sex discrimination.

—Tourangeau - Direct Examination/Quinlan—

1 Because she is a woman what she said didn't matter, she wasn't
2 provided comparable accounts for taking them away, and they
3 didn't investigate whether she in fact turned this guy down.
4 It goes to the disparate treatment of women.

5 MR. WALL: Your Honor, first of all, what she is going
6 to testify to is hearsay, and, second of all, this is a way of
7 trying to backdoor in information regarding a claim that's
8 already been --

9 THE COURT: I'm sorry, I can't hear, you're mumbling
10 here.

11 MR. WALL: Yeah, sorry, it's -- No. 1, it's hearsay
12 what she is going to elicit from this witness, and, No. 2, this
13 is a way of backdooring in an issue that Your Honor has already
14 ruled is out of this case.

15 THE COURT: Well, I don't know what she is going to
16 say. I don't think it's hearsay because it's not for the
17 truth. The jury isn't going to be -- isn't going to know
18 anything about a hostile work environment claim. So to the
19 extent it's admissible what would only be admissible in the
20 theories before the jury.

21 MR. WALL: And it's our indication that there is no
22 relevant information with regard to the claims that are current
23 here. There is no retaliation claim with regard to Title VII
24 or the Maine Human Rights Act as it pertains to Title VII, it's
25 only with regard to the Equal Pay Act, so this has no relevance

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1 to any kind of retaliation issue, Your Honor.

2 THE COURT: I think that's correct.

3 MS. QUINLAN: We did allege retaliation under the
4 Maine Human Rights Act, though, with the sex discrimination.

5 MR. WALL: But it only incorporated what was
6 retaliation in the Equal Pay Act, it made reference to what
7 appeared before in the complaint.

8 MS. QUINLAN: This just goes to the history of how
9 they were treating women, and it's a long history. She is the
10 first female sales representative. What happens when this
11 issue comes up? They mishandle it.

12 MS. WHITE: It also seems relevant just based on the
13 routes and having one taken away and others not replaced seems
14 highly relevant to the issues.

15 THE COURT: All right. Well, I'm going to allow it,
16 but I want you to move quickly through it.

17 MS. QUINLAN: Yes, Your Honor.

18 THE COURT: Your objection is noted.

19 MR. WALL: Thank you, Your Honor.

20 (Open court.)

21 BY MS. QUINLAN:

22 Q. Okay. So I understand that Bill Barksdale became
23 flirtatious and kind of chummy with you. Was there an occasion
24 when he tried to call you?

25 A. Yeah, so --

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1 Q. Okay.

2 A. Yes.

3 Q. And when did he -- when did he try to call you?

4 A. I don't remember the exact date or when it was, but yeah.
5 I had gotten a creepy feeling from him and it was night, I was
6 sleeping, I heard my phone ring, I looked at it, it woke me up,
7 and it was about almost 1:00 in the morning, and I saw it was
8 his number.

9 Q. Okay.

10 A. I ignored it, but I thought it was very strange.

11 Q. Okay. And then did something else happen with Bill
12 Barksdale that made you feel uncomfortable?

13 A. Yeah. So I had saw him, I had seen him a time after that
14 at the store, and just the way he would look at me made me
15 uncomfortable, and he said he had been talking with his
16 girlfriend Joyce and thought it would be great if I could join
17 the two of them for a drink sometime. The way he said it to me
18 just felt weird and I --

19 Q. Why did it feel weird, did it --

20 A. Well, again, because the -- the way he had been acting
21 in -- in looking at me and the way he said it, I -- my take
22 away was he didn't want to just have a drink with me and his
23 girlfriend, I think he wanted more than that.

24 Q. Okay. And did you -- what did you do in response? Did
25 you go for the drink with him --

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1 A. No.

2 Q. -- and his girlfriend?

3 A. No, I just kind of blew it off, you know, so, no, I never
4 did and --

5 Q. Did you report this to anybody at Nappi Distributors?

6 A. I didn't officially report anything. I mean I knew it was
7 creepy and I didn't like it, but, you know, I grew up in the
8 restaurant business, I'm used to this kind of thing, I can
9 handle myself. You know, I wasn't worried about it like that.
10 I did -- I'm not sure how long after it, but I was with Ian
11 Brown in his office just chatting about something else and I
12 did tell him that Bill Barksdale creeps me out; he said why;
13 and so I told him the vibes I was getting from him and how he
14 asked me to join him and Joyce for a drink and it felt
15 inappropriate to me and weird; and Ian agreed, he said, yeah,
16 that's strange, definitely don't need to go obviously, and just
17 tell him between your job and the inn and your life you're just
18 you're too busy for that, blow him off for sure, you know, if
19 that's what you want to do, which I did.

20 Q. Okay.

21 A. And I did.

22 Q. And did anything else come about with this interaction
23 with you and Bill Barksdale?

24 A. Well, it was sometime after that -- so then I just
25 never -- you know, I responded to his drink request after that

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1 but went about my business trying to be his sales rep, and then
2 I don't know how long after exactly but Paul Carr called me one
3 morning and said he had gotten a call from Bill Barksdale and
4 he wasn't happy with the service I was providing and had
5 requested a new sales rep.

6 Q. And do you think that this conversation with Paul occurred
7 about two months after you turned Bill Barksdale down?

8 MR. WALL: Objection, Your Honor. That's --

9 THE COURT: Yeah. Why don't you just ask a question
10 rather than telling her the answer first.

11 MS. QUINLAN: Okay. Sorry, Your Honor.

12 A. Yeah, I don't -- I don't know.

13 BY MS. QUINLAN:

14 Q. Sorry, let me just ask you the question.

15 A. Okay, sure.

16 Q. How close in time to the -- when you turned Bill Barksdale
17 down did you have this conversation with Paul Carr?

18 A. I would say it was a couple of months.

19 Q. Okay. And, I'm sorry, I think you started to tell me
20 this -- this happened in 2015, right?

21 A. Yes.

22 Q. Okay. What did Paul tell you was the issue with Bill
23 Barksdale?

24 A. Well, he just said he wanted a different sales rep and --
25 I don't know -- yeah, and so I was surprised by that and upset.

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1 You know, it was my first year and I was trying to work really
2 hard, and I thought I was doing a good job, so it, you know,
3 upset me. He was very apologetic and just said I don't -- you
4 know, I just don't have a choice because if we don't switch
5 reps, you know, he'll -- he won't do business with us anymore.
6 And he wasn't the owner of the business, a woman named Peggy
7 was the owner of that business and another business Kitchen
8 Chicks Catering, so it really like affected two accounts, so --

9 Q. So you lost two accounts?

10 A. I did.

11 Q. Okay. And who did those accounts go to?

12 A. Terry O'Brien.

13 Q. Okay. And did you have any other follow-up conversation
14 with any other member of management at Nappi about this
15 occurrence?

16 A. About -- oh, yeah. And so after a sales -- shortly after,
17 I don't know if it was a couple of weeks, I think, because when
18 our next sales meeting was talking with Paul about that and he
19 said why do you think he doesn't like you or, you know, why did
20 he not want you anymore, or something along those lines. And I
21 said, well, he creeped me out anyway, and he was I think really
22 trying to hit on me, and I didn't want any part of it and that
23 probably irritated him. And he just kind of rolled his eyes
24 and yep, probably, like that's Bill, because he knew him as
25 well. And I mean that was pretty much the end of the -- end of

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1 it.

2 Q. Okay. And did you get any accounts provided to you to
3 replace the accounts that you lost --

4 A. No.

5 Q. -- as a result of this? Okay. I am going to show you
6 what I have marked as Exhibit 30. Have you seen this document
7 before?

8 A. I'm sorry?

9 Q. Have you seen this document before?

10 A. Oh, yes, I have.

11 Q. Okay. Okay. And what is this document?

12 A. This summarizes during one of our sales meetings Paul had
13 mentioned a product that we -- he wanted us to -- you know, we
14 had six cases of I think in-house, he wanted to get -- get rid
15 of it, let's get it out so we can order more, replace it,
16 and --

17 Q. Let me just pause you right there. Is this an e-mail that
18 you sent between --

19 A. Oh.

20 Q. -- yourself and Ian Brown about an incentive program?

21 A. Yeah, so I sent -- this initial e-mail was to Valarie
22 Ellis. She is the -- was the -- the wine administrator at the
23 time and was the person who figured out I think the incentive
24 payouts and processed those payments so.

25 Q. Okay.

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1 A. Yes.

2 MS. QUINLAN: And, Your Honor, I move to admit
3 Exhibit 30.

4 THE COURT: Any objection to 30?

5 MR. WALL: No objection, Your Honor.

6 THE COURT: It's admitted.

7 MS. QUINLAN: And if we could publish to the jury?

8 THE COURT: You may.

9 MS. QUINLAN: Thank you.

10 BY MS. QUINLAN:

11 Q. Okay. So if we look at this bottom e-mail here, I think
12 you were just starting to explain to me I think you said it was
13 an e-mail that you had sent to Valarie?

14 A. Yeah, so the opportunity Paul had told us about in the
15 sales meeting I -- you know, it was -- was -- he had said \$50
16 per placement, six-pack placement, so I thought that was pretty
17 good money, so I just went out that day and was able to sell
18 three of the six-pack cases. I figured 150 bucks, that's
19 pretty good.

20 Q. Were you sending Valarie an e-mail because you wanted to
21 check on what you had been paid and it wasn't what you expected
22 for that incentive program?

23 A. Yes, this e-mail --

24 MR. WALL: Your Honor, it's leading.

25 THE COURT: It is leading. I'm not a stickler on

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1 leading --

2 THE WITNESS: Okay, sorry.

3 THE COURT: -- but you really should just try and ask
4 a question that doesn't --

5 MS. QUINLAN: Sorry, I was trying to be efficient.

6 THE COURT: -- have the answer in it. I know, go
7 ahead. Go ahead.

8 BY MS. QUINLAN:

9 Q. So why -- why were you sending this first e-mail to
10 Valarie?

11 A. Okay. So Valarie was the wine administrator responsible
12 for paying out the incentives. I didn't think that I was paid
13 properly on it, so I was questioning it.

14 Q. Okay. And did Valarie respond to you?

15 A. Yeah, and I copied Ian because he was my immediate
16 supervisor. And he said he misspoke, that Banfi when he -- his
17 recollection is they used to pay \$50 per -- per placement on
18 that product but it wasn't the same as what it used to be.

19 Q. Okay. And then I think you sent this e-mail after?

20 A. Yep, just saying, you know, not a big deal but Paul said
21 it, I had sold the three cases, it ended up being \$20 a
22 placement instead of 50, so it was just, you know, an
23 inconsistent thing that happened.

24 Q. So both Ian Brown and Paul Carr had told you that this
25 incentive was \$50 per placement?

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1 A. Yes, they -- they said it to the sales -- the whole sales
2 team.

3 Q. And so you made some sales based on that incentive payout?

4 A. Sure, yes.

5 Q. And you said you made three?

6 A. Three.

7 Q. And what did you end up receiving for that?

8 A. \$60.

9 Q. Okay. Instead of the 150 that you thought you would get?

10 A. Yes.

11 Q. And is this something that happens here and there with
12 Nappi Distributors' incentive programs?

13 A. Yeah, I mean some of -- yeah, I mean sometimes the -- the
14 way things are worded as far as like placements and there is
15 a -- a non buy type situation, so it's -- if it -- I would have
16 to see it right in front of me, but would say like 90 days non
17 buy. So if you count 90 days between the last time it was
18 received into the account and it's more than 90 days or more
19 between the next time it's sent in, it -- it would qualify.
20 But that's not actually the way it really is, which I found out
21 at some point. So that's just, you know, one thing.

22 I don't know if I can think of right now, you know, a
23 specific example of when -- you know, sometimes there is typos
24 in -- in the incentive programming that we get, it would say,
25 you know, \$15 for a placement and then when you actually get

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1 paid it's not that much and you question it and said, oh, it
2 was a typo, it should have said 10, not 15, like a human error
3 kind of thing, but things like that do happen. Is that what
4 you mean?

5 Q. Okay. So I understand that at some point you found out
6 you were pregnant; is that right?

7 A. Yes.

8 Q. And when did you find out you were pregnant?

9 A. It was August of 2015.

10 Q. And that must have been a very exciting time for you?

11 A. Yeah, it was, at my age, too.

12 Q. Yeah. And when was it that you let management at Nappi
13 know that you were expecting?

14 A. I -- I told Ian first and I think it was probably
15 October -- September-October. I'm not exactly sure, I think it
16 was October, so I let Ian know.

17 Q. Okay. And what did Ian say to you?

18 A. He was supportive and congratulated me. I told Mike Hale,
19 I think, after Ian, he was, you know, supportive, said
20 congratulations. Both Ian and Mike had said to me that have
21 you told Paul yet, asking me if I had told Paul Carr, and I
22 said no, not yet, and they separately expressed to me that they
23 -- each of them were concerned just in how he might react and
24 wanted to know if I wanted one of them or both of them to come
25 with me when I told him. I -- you know, kind of freaked me out

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1 a little, you know, I thought that was strange and concerning,
2 but I didn't. But I did then go in to see Christine Fox from
3 HR just to let her know because I also wanted to, you know,
4 just let that department -- benefit department know so I could,
5 you know, try to learn about what my benefits were going to be,
6 and I mentioned to Christine that Mike and Ian were concerned
7 about me telling Paul, and Christine said I'm sure he'll be
8 fine, but, you know, are you -- do you want me to go with you,
9 or something to that line, and I said no, I'm okay, and I went
10 right next-door and told Paul and -- and he was fine so.

11 Q. And how did it make you feel when Mike and Ian kind of
12 expressed their concern for revealing your pregnancy to your
13 employer?

14 A. Well, yeah, I mean that was concerning, and it -- I was --
15 I was really nervous to go in and talk to him thinking I was --
16 I don't know -- I didn't know what he would say to me. You
17 know, I hadn't been there that long so I just didn't know. But
18 the fact that they were both concerned about it and talked to
19 me about it and made a thing of it like they were concerned, it
20 stuck with me as just seemed strange.

21 Q. Okay. And when was it that you think you told Paul and
22 Mike and Ian about your pregnancy?

23 A. It was pretty -- I told Ian first, but it was very kind of
24 shortly thereafter. I don't know exactly, but within a
25 two-week timeframe I would say.

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1 Q. But I mean what month did you tell them?

2 A. Oh. Oh, I'm thinking it was probably October.

3 Q. Okay.

4 A. I think so.

5 Q. I'm showing you what I have marked -- did you already go
6 over this?

7 I'm showing you what I have marked as Exhibit 31. Have
8 you seen this document before?

9 A. Yes.

10 Q. And is this e-mail correspondence between you and Ian?

11 A. Yes, but initially it's an e-mail that I had sent to
12 Valarie Ellis with questions about incentives and then --

13 Q. Okay, and I will pause you right there.

14 A. Sure.

15 MS. QUINLAN: Your Honor, I move to admit Exhibit 31.

16 THE COURT: Any objection?

17 MR. WALL: One moment, Your Honor.

18 THE COURT: Sure.

19 MR. WALL: No objection, Your Honor.

20 THE COURT: 31 is admitted.

21 MS. QUINLAN: And I would like to publish to the jury.

22 THE COURT: You may.

23 BY MS. QUINLAN:

24 Q. Okay. So if we go down to this bottom e-mail, was this
25 the e-mail that you had first sent to Val?

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1 A. Yes.

2 Q. And why were you sending an e-mail to Val asking her for
3 your breakdown about your September incentive pay?

4 A. Well, because, you know, I get direct deposit and so
5 sometimes I don't know when we're going to -- I'm going to get
6 paid for incentives except the money will just like show up in
7 my account and I have no idea how it was paid, how it was
8 calculated. So I wanted to see that so I could check it
9 against what I had been keeping track of just to make sure it
10 was all -- you know, it was accurate. With Excel, and this has
11 happened before, you know, again human error, nobody's perfect,
12 but with formula errors and such it's happened before that I
13 have caught it and then questioned it and then it gets fixed.
14 But, you know, you -- it's money, it's my money, so I keep a
15 good eye on it --

16 Q. Okay.

17 A. -- so I wanted to see the breakdown.

18 Q. Okay. And then why did you forward it along to Ian?

19 A. I think it was like a week -- yeah, a week later and I
20 hadn't heard from Val. And I had also asked Mike Hale for the
21 same report, he sort of oversaw a lot of the incentives so I
22 asked him, and I hadn't heard back from either of them so I
23 just asked Ian, you know, I -- and I just was a little confused
24 why I wouldn't hear back almost immediately because the work
25 would have been done to come up with the dollar amount I was

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1 getting paid, so I -- and I was asking him that, am I -- you
2 know, am I missing something, this work should have -- would
3 have been done so to copy and paste and send to me, that's how
4 it should go, right? So I was just more questioning him am I
5 handling this correctly and could you help me get my -- get the
6 information.

7 Q. Okay. So after you announced your pregnancy, and I
8 understand that at some point you planned a babymoon; is that
9 right?

10 A. Yeah. So in -- I was due in April I think it -- yeah, it
11 was in January, wanted to just, if I could, go away with my
12 husband for a few days.

13 Q. Okay. And where did you plan to go with your husband?

14 A. We were going to go to the Caribbean.

15 Q. Okay. And when was this -- when were you trying to plan
16 this trip for?

17 A. January.

18 Q. And so was that kind of the slower time of year for you?

19 A. That's my slowest month of the year hands down.

20 Q. Okay. And did you ask anybody at management whether you
21 would be able to take the time to do this babymoon?

22 A. Yeah, I -- I spoke to Ian first and just let him know that
23 I was, you know, wanting to go away, a slow time of the year,
24 and, you know, I still hadn't earned any vacation time at this
25 point and knew -- so I just didn't really -- you know, I just

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1 asked him if I would be -- if I could go away --

2 Q. Okay.

3 A. -- and would that work and -- and I know Mike -- I think I
4 spoke to Mike Hale, as well, after Ian, said we could work
5 it -- we could -- we could make that work, I think.

6 Q. Okay. And I'm just going to show you page one of
7 Exhibit 86. Have you seen this before?

8 A. Oh, yes, yes.

9 Q. And what is it?

10 A. So it's texting -- a text -- text messages between myself
11 and Ian.

12 MS. QUINLAN: Okay. Your Honor, I move to admit
13 page one of Exhibit 86.

14 THE COURT: Any objection?

15 MR. WALL: No objection, Your Honor.

16 THE COURT: Page one of 86 is admitted.

17 MS. QUINLAN: And I would like to publish to the jury.

18 THE COURT: You may.

19 MS. QUINLAN: Thank you.

20 BY MS. QUINLAN:

21 Q. Okay. So it starts with a text message from you to Ian
22 Brown on October 13, 2015, and you say oh, my God, listen to
23 this dysfunction junction. What was the dysfunction junction?

24 A. Well, I had started at Nappi on January 5th and because it
25 was five days after the start of that new year I was not going

—Tourangeau - Direct Examination/Quinlan—

1 to get vacation for another year I think is what it was. I --
2 I didn't qualify for vacation because I hadn't been there a
3 full year starting on January 5th. So I was like this is
4 insanity, this is almost comical, this is crazy, I only get
5 three personal days in a year --

6 Q. So --

7 A. -- no vacation.

8 Q. So at this point you weren't accruing time off?

9 A. Yeah, right, it sounds like.

10 Q. But if you had started January 1st or a little bit earlier
11 you would have been accruing days as you progressed?

12 MR. WALL: Your Honor, this is again it's leading.

13 THE WITNESS: No.

14 THE COURT: Why don't you rephrase.

15 MS. QUINLAN: I will rephrase the question.

16 BY MS. QUINLAN:

17 Q. Was the time -- the -- was the timing that you began did
18 it have an affect on how you accrued benefits?

19 A. Yeah, I thought -- I'm sorry, I thought I just said that.
20 Because I started on January 5th I wasn't there a full year so
21 I was not going to earn vacation for the next year. I had
22 found that out I believe from Becky Douglass.

23 Q. Okay. And was this when you were trying to figure out
24 whether you could take the time off for a babymoon?

25 A. I was starting to think about it because obviously I was

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1 pregnant and I had already told them by then that I was
2 pregnant, so.

3 Q. Okay. And what did Ian say in response?

4 A. He said, I'm speechless, only at Nappi, he would talk to
5 Mike Hale and if there was ever a time to make an exception
6 this would be -- this would be it.

7 Q. Okay. And why did he think that you should talk to -- or
8 he should talk to Mike Hale?

9 A. Because he might be able to persuade Becky Douglass to
10 make an exception.

11 Q. To allow you to take some time off?

12 A. Yes, that's what this.

13 Q. Okay. And then I want to show you what I have marked as
14 Exhibit 32. Have you seen this document before?

15 A. Yes.

16 MS. QUINLAN: Your Honor, I move to admit Exhibit 32.

17 THE COURT: Any objection to 32?

18 MR. WALL: One moment, Your Honor. No objection, Your
19 Honor.

20 THE COURT: 32 is admitted without objection.

21 MS. QUINLAN: And I would like to publish to the jury.

22 THE COURT: You may.

23 BY MS. QUINLAN:

24 Q. So, Michele, it looks like this starts at the bottom with
25 an e-mail from you to Ian Brown, but I would like to point you

—Tourangeau - Direct Examination/Quinlan—

1 to this response from Ian to you on January 25, 2016, and he
2 says on another note I wish things had gone smoother at Nappi
3 while you were away. I tried to keep the ship calm but my
4 colleagues aren't quite as relaxed.

5 Was this period of time where you were away that Ian was
6 referring to for a babymoon?

7 A. Yes.

8 Q. And what did he mean that his colleagues aren't quite as
9 relaxed, was it upsetting to them that you had gone on the
10 babymoon?

11 MR. WALL: Objection, Your Honor.

12 THE COURT: Well, they -- the problem with the
13 question is you're asking her what he meant --

14 MS. QUINLAN: Could I rephrase?

15 THE COURT: -- so -- yes, you need to rephrase.
16 It's -- it's her understanding of what he meant, correct?

17 MS. QUINLAN: Yes.

18 THE COURT: Okay.

19 MS. QUINLAN: Thank you.

20 BY MS. QUINLAN:

21 Q. Did you have an understanding of what Ian was referring to
22 when he made the statement, on another note I wish the things
23 had gone smoother at Nappi while you were away. I tried to
24 keep the ship calm but my colleagues aren't quite as relaxed?

25 A. Yes. While I was away I had missed a phone call from Mike

—Tourangeau - Direct Examination/Quinlan—

1 Hale and when I got back I think I sent -- yeah, I'm not
2 exactly sure of the exact timing, but when I got back was told
3 that I think Becky -- it was Becky Douglass had -- was
4 questioning what -- you know, that -- if I was away -- I think
5 someone -- one of my customers called the main Nappi to ask a
6 question or something and so Becky was -- went into Mike Hale's
7 office where he kept a calendar of peoples time off and I
8 wasn't written on the calendar, I believe, and so Mike kind of
9 panicked, called me, and so I -- that's what he was referring
10 to. I don't know.

11 Q. Had you done anything wrong? Had you gotten approval to
12 go on the trip by your managers Ian and Mike?

13 A. Yes.

14 Q. Okay. Okay. When was your due date, first of all?

15 A. April of 2016. I don't remember the exact date.

16 Q. Okay. And when did you end up giving birth to Sloan?

17 A. Oh, I remember that, it was April 9th of 2016.

18 Q. Okay. And what did you do to prepare for your maternity
19 leave?

20 A. So I had conversation -- several conversations with Mike
21 Hale and he -- just about my leave, who would be covering for
22 me, because he did oversee the sales assistants, and he thought
23 it would be beneficial to Nappi, to me, to my customers, if I
24 were willing to stay connected. Given the time of the year as
25 well, April is when people are starting to really open and

—Tourangeau - Direct Examination/Quinlan—

1 business gets going. And I was happy to hear that because so
2 much of the work that I do, as I explained before, is all
3 winter trying to get things ready for when the accounts open in
4 the spring and if -- so that -- that really has an impact on
5 how the whole season is going to go for the most part and money
6 that I would earn. So we talked about me staying involved,
7 doing as much work as possible ahead of time, getting all my
8 restaurant menus done, presenting to -- everything I explained
9 before, I'm not going to bore you with me repeating it again,
10 but the types of things I would do to get accounts ready. If I
11 did all of that and gave Afton, who was the sales
12 representative who would be covering for me --

13 Q. And I just want to stop you right there, the sales
14 assistant, right?

15 A. Sales assistant Afton.

16 Q. Yep.

17 A. Who would be covering for me.

18 Q. Okay.

19 A. Did I say that? Yeah, so I -- to give her any and all
20 information that she would need to make covering for me
21 seamless. Where the decisions would be made on what new items
22 might be placed here and there she basically would just take
23 orders. I would to be -- I was to be available to Afton to
24 talk as often as she needed, which I did, and, you know, my
25 customers all knew I'm on maternity leave --

—Tourangeau - Direct Examination/Quinlan—

1 Q. And before we get there, I -- I just kind of want to stop
2 you because I was just focusing on what you did to prepare for
3 it. Did you also create like a big printout of your accounts
4 and --

5 A. That --

6 Q. -- where Afton should physically go each day, that sort of
7 thing?

8 A. Well, yeah, that was part of the spreadsheet I created for
9 Afton was, yeah, very detailed with who she would see when, as
10 I would do any time I'm away, but spreadsheets for retail
11 stores, for example, that were going to be opening where I
12 created the whole wine set and basically, you know, did a --
13 laid out the shelving, what's going to go here, what's going to
14 go there, did all of that research and all of that ahead of
15 time so it was done so when they actually opened or were
16 opening she could physically go into the account and punch the
17 order in as I had laid it out. That was an example of
18 something that I did for several different places.

19 Q. And for the accounts that are more seasonal and aren't
20 open year-round, had you made sure to go visit all of those
21 accounts that were not yet opened, soon to be opening, to make
22 sure that they knew that you were on maternity leave, that sort
23 of thing?

24 MR. WALL: Your Honor, I object to the form of the
25 question, it's basically an answer.

~~Tourangeau - Direct Examination/Quinlan~~

1 THE COURT: Overruled.

2 A. Yes.

3 BY MS. QUINLAN:

4 Q. Okay. Did you do anything else to make sure that the
5 accounts were ready to go to open while Afton was covering on
6 your maternity leave?

7 A. Well, yeah, so everything I have said, and my customers
8 I -- everyone obviously knew I was having a baby and knew that
9 I would be out on leave because I told them that, also said,
10 you know, any questions on anything, new items, anything above
11 and beyond placing your, you know, regular weekly orders I'm --
12 I'm here for you, please let me know, I'm happy to help. I
13 want to -- excuse me, I want to, you know, stay involved with
14 this so when I do come back in June we're -- everything is good
15 for the summer.

16 Q. And did you work right up to your delivery day with Sloan?

17 A. I did. I was supposed to be induced at some point, I
18 forget the date, but then I had her on April 9th, which was a
19 Saturday, and I had worked that Friday before with Afton, and,
20 you know, starting to get a little crampy, and Afton was
21 driving and I was in the passenger seat. So we did, we worked
22 almost a full day, and then I started having pretty bad cramps
23 around midnight and so my husband and I went to the hospital
24 and then had the baby on -- had Sloan on Saturday afternoon.

25 Q. And I want to show you what I have marked as Exhibit 34,

—Tourangeau - Direct Examination/Quinlan—

1 and is this the e-mail from you letting Nappi management know
2 that you had given birth to Sloan?

3 A. Yes, that was to Paul and Christine letting them know I
4 did have the baby. I sent a picture, let them know her size
5 and that she was healthy, and that I was obviously on maternity
6 leave now.

7 MS. QUINLAN: Your Honor, I move to admit Exhibit 34.

8 THE COURT: Any objection?

9 MR. WALL: We do have an objection to the second page
10 of the exhibit, Your Honor.

11 THE WITNESS: I can't see it. Oh.

12 THE COURT: What's the basis?

13 MR. WALL: Well, may we approach sidebar, Your Honor?
14 (Sidebar conference.)

15 MR. WALL: For one --

16 THE COURT: A picture of a baby?

17 MR. WALL: Yes. For one thing it's -- my
18 understanding is that these kind of pictures are not supposed
19 to be part of the record if it's possible to keep them out;
20 but, second of all, it seems pretty obvious why it's in there,
21 so it's unnecessary for the purposes of the questioning.

22 THE COURT: Yeah. I'm going to overrule it. I don't
23 see it's any harm -- there is any harm for it.

24 MR. WALL: Thank you, Your Honor.

25 (Open court.)

—Tourangeau - Direct Examination/Quinlan—

1 THE COURT: Objection is overruled.

2 MS. QUINLAN: Your Honor, I would like to publish to
3 the jury.

4 THE COURT: You may.

5 BY MS. QUINLAN:

6 Q. Okay. And I think this e-mail chain starts at the bottom
7 with you letting them know that you had given birth on
8 April 9th at 4:21, six pounds, fifteen ounces, and is this a
9 picture of your baby?

10 A. It is.

11 Q. And you sent that to Paul and Christine when you let them
12 know?

13 A. Yeah, yeah.

14 Q. Okay. And then Paul responded to you congratulations and
15 he let you know that Afton would be getting your iPad; is that
16 right?

17 A. Well, we were going to swap iPads because mine was faster
18 than hers.

19 Q. Okay.

20 A. And so I was going to swap with her while I was out, and
21 he also just said someone would come and get my van and hold it
22 for me at Nappi until I was ready to come back to work.

23 Q. Okay. And did that happen?

24 A. It did.

25 Q. Okay. And then I am going to show you what I have marked

—Tourangeau - Direct Examination/Quinlan—

1 as Exhibit 35, and this is -- I guess I shouldn't tell you.

2 Have you seen this before?

3 A. Yes.

4 Q. And what are all of these text messages?

5 A. These are text messages between myself and Afton Hawkins.

6 Q. And are these text messages between yourself and Afton
7 Hawkins while she was covering for your maternity leave?

8 A. Yeah, before -- they start right before Sloan was born and
9 then as you're pulling the pages I'm seeing the dates
10 April 11th and --

11 Q. So yes?

12 A. So yes.

13 MS. QUINLAN: Okay. Your Honor, I move to admit
14 Exhibit 35.

15 THE COURT: Any objection?

16 MR. WALL: Yes, Your Honor, they're hearsay.

17 MS. QUINLAN: Your Honor, these are not -- it's only
18 partial hearsay first, it's statements that -- communications
19 that Michele had with her coworker, and she has testified that
20 they're demonstrative of the communications that she had with
21 Afton while she was out of -- out on maternity leave but
22 staying in touch with her in accordance with the agreement
23 between her and Mike Hale.

24 THE COURT: All right. I'll see counsel.

25 (Sidebar Conference.)

—Tourangeau - Direct Examination/Quinlan—

1 THE COURT: Well, I don't -- I don't think they're
2 hearsay so long as they're part of her real business record,
3 but these appear to be both a mixture of personal commentary,
4 some of them don't have anything to do with the price of tea in
5 China, and if it's to keep a coworker advised of what is going
6 on for purposes of business it's one thing, but if it's
7 chatting about the beautiful baby it's another.

8 MS. QUINLAN: I think there is only one chat really
9 about the baby and it's on her way to go see Michele at her
10 house to have discussions about --

11 THE COURT: Well, and I haven't seen it so why don't
12 you show it to me. What's your?

13 MR. WALL: Well, Your Honor, first of all, I do think
14 it's hearsay because I don't think this would be considered a
15 regular -- a business -- a record of regularly conducted
16 business. This is a personal communication between two
17 individuals, both of whom -- it's out-of-court statements, not
18 being offered for the truth of the matters asserted, so --

19 THE COURT: They are -- as I understand it, this is
20 her replacement during the period --

21 MR. WALL: I understand it, Your Honor.

22 THE COURT: -- so.

23 MR. WALL: But she -- she is not --

24 THE COURT: Let's assume for a moment that they are
25 talking about business, how is that account going, how is this

—Tourangeau - Direct Examination/Quinlan—

1 account going, that would not be hearsay, right?

2 MR. WALL: Well, if -- I don't think just because
3 they're talking about business doesn't necessarily make it a
4 business record, Your Honor.

5 THE COURT: Well, two -- for two employees to
6 communicate between each other I think fits within the business
7 records exception of the hearsay rule.

8 MS. QUINLAN: And this is --

9 THE COURT: So long as the conversation is about
10 business.

11 MS. QUINLAN: And this is how --

12 THE COURT: This is like I'm upstairs nursing the
13 baby, can you give me 20 minutes if you're in town. I mean I
14 haven't looked at this whole thing --

15 MS. QUINLAN: But that's because Afton was coming to
16 her house to meet to discuss the accounts so she was just
17 saying I'm upstairs nursing. I can --

18 THE COURT: This has got all sorts of stuff.

19 MS. QUINLAN: I can lead to --

20 THE COURT: I mean I could use a case of prune
21 Riesling and a box of Chablis if you do.

22 MS. QUINLAN: I could certainly wait and lay the
23 foundation with Afton, I'm happy to do that as well.

24 THE COURT: Well, I don't think -- I don't think it's
25 a foundational issue. I don't think you're objecting on

—Tourangeau - Direct Examination/Quinlan—

1 foundational grounds.

2 MR. WALL: My objection is not on foundational
3 grounds, Your Honor.

4 THE COURT: Why don't -- why don't we do this, I
5 haven't looked at this. Why don't you -- do you need to ask
6 questions about this?

7 MS. QUINLAN: No.

8 THE COURT: I mean I can take a look at it during the
9 course of the rest of the day and figure out how much of it's
10 admissible and whether or not I really have a problem with it.
11 I do think it --

12 MS. WHITE: Would the Court prefer redactions?

13 THE COURT: Well, I don't -- I have never seen it, so
14 I really don't know anything about it. And I don't know if --
15 is there stuff in here that you really would -- I mean they're
16 talking about come on over, I've got some muffins for you. Do
17 you think that's going to be prejudicial?

18 MR. WALL: I just think, Your Honor, that there is
19 aspects of this back and forth that really is quite remote from
20 anything going on in this case and it seems objectionable.
21 Again, I do think it is hearsay. I understand Your Honor's
22 view on the business record exception, but I don't think this
23 constitutes anything that would be considered a business record
24 kept by a business in the ordinary course --

25 THE COURT: You're going to lose on that one because I

—Tourangeau - Direct Examination/Quinlan—

1 have already made up my mind.

2 MR. WALL: I understand that, Your Honor. But in
3 addition to that I think there is substantial information in
4 there that's in no way probative of any issue in this case and
5 frankly it's just, you know, you're talking about issues that
6 relate to, you know, personal communications that I think is --

7 MS. QUINLAN: And, Your Honor, it's not so much about
8 what the communications say, it's establishing when Afton is
9 going to Michele's house to meet with her on her maternity
10 leave to discuss business issues. So they may seem personal in
11 nature, but the timing of them shows how often and how
12 frequently they were meeting to discuss --

13 THE COURT: All right. Well, I'll -- I'll look at it
14 while we're finishing up. I'm going to tell them to come in,
15 by the way, tomorrow at -- at nine. We've got a storm and I
16 want them to get the advantage of daylight, so rather than
17 coming here and being here by 8:30 I think maybe if I delayed
18 it by half an hour that won't put a crimp in your style and I
19 think that will show that we're concerned about the safety of
20 the jurors. So I'll take a look at this --

21 MS. QUINLAN: Okay.

22 THE COURT: -- and we'll defer it until just before we
23 break.

24 MS. QUINLAN: Okay. Thank you.

25 MR. WALL: Thank you, Your Honor.

Tourangeau - Direct Examination/Quinlan

1 (Open court.)

2 THE COURT: I'm going to defer ruling on that and will
3 review it before the end of the day. You may proceed.

4 MS. QUINLAN: Okay.

5 BY MS. QUINLAN:

6 Q. Were you meeting with Afton during your maternity leave?

7 A. Yes.

8 Q. How frequently were you meeting with her?

9 A. At least once a week on average, sometimes more.

10 Q. Okay. And when you would meet with her, where would you
11 two meet?

12 A. She would come to my house.

13 Q. Okay. And would she text you to let you know when she was
14 on her way over?

15 A. Sure, we texted quite a bit. Which a lot of business
16 conversations happened via text as well, but, yeah, she
17 wouldn't just show up unannounced.

18 Q. Okay. And those communications where she said she was
19 coming to see you, was the purpose of the meeting to discuss
20 business or was it personal?

21 A. No, it was always to discuss business. There was one time
22 right after Sloan was born that she brought me a candle when
23 she came over with like a picture of her on the candle, it was
24 very cute, so that was a personal gesture, but she never came
25 just to like hang out with me and the baby ever.

—Tourangeau - Direct Examination/Quinlan—

1 Q. Okay. I would like to show you what I have marked as
2 Exhibit 37. Have you seen this document before?

3 A. Yes.

4 Q. And it looks like this is an e-mail string between you and
5 Christine Fox; is that right?

6 A. Yes.

7 MS. QUINLAN: Your Honor, I move to admit Exhibit 37.

8 THE COURT: Any objection?

9 MR. WALL: No objection, Your Honor.

10 THE COURT: It's admitted.

11 MS. QUINLAN: And if I could publish to the jury.

12 THE COURT: You may.

13 BY MS. QUINLAN:

14 Q. And it says here if we look down at the bottom, it's an
15 e-mail from Christine on Friday, June 4, 2016, and she says at
16 the bottom, PS how did your first week go?

17 Had you gone to work -- was that your first week back from
18 maternity leave?

19 A. Yes.

20 Q. So you started that Monday before?

21 A. I did.

22 Q. Okay.

23 A. I remember it was the day of the Nappi picnic.

24 Q. Okay. And it looks like you were just starting to get
25 enrolled in the 401K; is that right?

—Tourangeau - Direct Examination/Quinlan—

1 A. Yes.

2 Q. Okay. Was there a reason why you had waited so long?

3 A. Yeah. I don't know if I have to see that again if I was
4 changing beneficiaries because of having the baby. I'm not
5 quite sure, I would have to read it. Yeah, I don't know.

6 Q. So if you had returned to work that Monday, that means
7 that you were out on maternity leave from April 11th to
8 June 17th of 2016; is that right?

9 A. Yeah, yes.

10 Q. Okay. And that's just a little over nine weeks; is that
11 right?

12 A. I think so. I'd have to go through the weeks in the
13 calendar to be quoted, but.

14 Q. So going back to the incentive payment while you were out
15 on maternity leave, did you end up getting that?

16 A. No. I got an e-mail from Valarie Ellis that showed
17 43 percent -- it showed the breakdown of the incentives during
18 that time period and 43 percent in the dollar amount that --
19 that I was to be paid and that's what I was paid.

20 Q. Okay. And just to clarify for the record, if we refer to
21 Valarie Ellis or Valarie Hale we're referring to the same
22 person, right?

23 A. Yes, Valarie Ellis, but she got married I don't know how
24 many years ago so now it is Valarie Hale, but it's the same
25 person.

—Tourangeau - Direct Examination/Quinlan—

1 Q. And who did she get married to?

2 A. Mike Hale who was the sales manager at Nappi that we keep
3 talking about.

4 Q. Okay. So I'm going to show you Exhibit 36. Have you seen
5 this document before?

6 A. Yes.

7 MS. QUINLAN: Your Honor, I move to admit Exhibit 36.

8 THE COURT: Any objection to 36?

9 MR. WALL: No objection, Your Honor.

10 THE COURT: 36 is admitted.

11 BY MS. QUINLAN:

12 Q. So I'm just starting with the first part of this e-mail
13 string, and it starts with an e-mail from Valarie Ellis on
14 June 13, 2016. Is this the report that you were referring to
15 earlier?

16 A. Yes.

17 Q. And it says here down at the bottom the total incentives
18 earned and at 43 percent \$1,719.96. Is that how much you were
19 paid out?

20 A. Yes.

21 MS. QUINLAN: Oh, I would like to publish to the jury,
22 Your Honor.

23 THE COURT: You may.

24 MS. QUINLAN: Thank you.

25 Q. Okay. And then up here it says, very helpful, thank you.

Tourangeau - Direct Examination/Quinlan

1 What does the 43 percent? I get the rest when I come back to
2 work officially? Is that what you wrote to Mike Hale?

3 A. It is.

4 Q. Okay. And then what was his response to you?

5 A. He said that Christine was supposed to speak to me on the
6 previous Friday and he would be happy to have a conversation
7 with me if I wanted to give him a call. So I forwarded the
8 e-mail to Christine Fox and just said please see below, is
9 there something we need to talk about.

10 Q. Okay. And did you end up having a conversation with
11 Christine Fox about the incentive pay on your maternity leave?

12 A. Yes, I did.

13 Q. And was it a phone conversation or was it in person?

14 A. It was a telephone conversation because I wasn't back to
15 work yet.

16 Q. Okay. And what did the two of you discuss in this phone
17 conversation?

18 A. So it was about -- you know, it was about the incentives
19 because I was expecting to get paid one hundred percent and --

20 Q. Did you tell Christine the arrangement that you and Mike
21 had made?

22 MR. WALL: Your Honor --

23 A. Yes, so --

24 MR. WALL: -- I'm objecting, it's leading.

25 THE COURT: Overruled.

—Tourangeau - Direct Examination/Quinlan—

1 A. So, yes, I ex -- yeah. And I know I wasn't exactly clear.
2 I mean I knew Christine was the head of HR, but why she was
3 going to be talking to me about this? So I mean, you know, we
4 got on the phone and I don't remember exactly how it started
5 but that was the topic, it was the incentives and I didn't get
6 them, and I was surprised I didn't get them, and I had worked
7 and spoken to Mike Hale several -- several times and we worked
8 out an agreement. And I already explained the agreement so I
9 won't say it again. But I explained that to Christine, and,
10 you know, she said, well, I spoke to Mike and he didn't tell
11 you that and you're lying. So that shocked me. She has called
12 me a liar.

13 BY MS. QUINLAN:

14 Q. And I just want to go back, you said you were surprised
15 that you were having the conversation with Christine, why was
16 that surprising to you?

17 A. Well, it was -- I hadn't talked -- she hadn't been a part
18 of this conversation at all before, you know, it was something
19 that Mike and I had talked about, and I really hadn't up until
20 this time had very much interaction with Christine, it just --
21 I hadn't had to. So I just -- yeah, I don't know. I remember
22 being -- just wondering why is she the one I have to talk to
23 about this, she wasn't a part of the agreement, I remember
24 that --

25 Q. Okay.

—Tourangeau - Direct Examination/Quinlan—

1 A. -- but.

2 Q. Okay. And when she called you a liar, or said that you
3 were lying, how did that make you feel?

4 A. Awful because I -- I -- I knew I was telling the truth, I
5 had lived it, you know. And so I was upset, I was angry, I was
6 counting on getting that money, I had, you know, not been
7 working. So I had a lot of emotions and feelings and I was
8 very upset. I -- I cried a lot when I got off the phone. I
9 might have even cried on the phone, I don't know.

10 Q. And do you think you held up your end of the bargain in --

11 A. A thousand percent I did and -- yeah. I mean I kept in
12 touch -- I did everything I was supposed to do and probably
13 more because that's just how I am. I keep in touch with my
14 customers and I always want to make sure things are -- are
15 going well because it -- it protects my income.

16 Q. So after you returned to work how was it adjusting back to
17 work life after having a baby?

18 A. Well, it was hectic, you know, I was tired for sure, but I
19 was happy to be back to work. Let's see. So I came back in
20 June, busy season. I'm trying to think just timewise -- yes,
21 so I -- you know, the incentive thing that had happened in my
22 mind never got resolved. I had spoke to Ian about it, he was
23 aware of it, and, you know, definitely said if I wanted to
24 bring it to Frank, Jr., I certainly could, but he didn't think
25 it would matter, that I wouldn't win that battle --

—Tourangeau - Direct Examination/Quinlan—

1 Q. Okay.

2 A. -- with Christine so don't -- you know, so there was that.

3 Q. I understand that at some point -- or actually let me back
4 that up.

5 After having this kind of uncomfortable conversation with
6 Christine when she told you you were lying, how was your
7 relationship with Christine once you did return?

8 A. Well, in the -- in my job being in outside sales I'm not
9 at the offices that much. You know, I come when we have sales
10 meetings or if I need to pick up product or samples, but, you
11 know, I live in my territory which is almost an hour away so I
12 don't have a reason to go there all the time so I don't
13 really -- I didn't really see her a whole lot, but there was
14 definitely awkward tension.

15 She was always nice -- you know, she is nice to me and
16 compliment my clothes and would smile at me and ask me about
17 the baby, and she had a picture of the baby on the refrigerator
18 that -- you know, in the staff area, as she did some other
19 babies as well, or other children, but -- but then I would, you
20 know, see her just sometimes just kind of glaring at me with
21 just a look of contempt and I said wow she really doesn't like
22 me. I remember thinking that, she doesn't like me. Which not
23 everyone does, I mean that -- it happens, but it was just looks
24 that kind of --

25 Q. Okay.

—Tourangeau - Direct Examination/Quinlan—

1 A. Yeah, just looks that she would give me and so I --

2 Q. I understand -- sorry, I'm just going to pause you right
3 there.

4 A. No, it's okay.

5 Q. I don't mean to interrupt you.

6 A. No, it's fine. I just -- so I didn't have a lot of
7 interaction unless there was a reason if I had to, and there
8 was a reason that I had to. Not that long I think after coming
9 back she had wanted to see me in her office to talk about some
10 damage that had been noticed on the side of my work vehicle.

11 Q. Okay. And when did she -- where were you when she asked
12 to speak with you about this damage to your vehicle?

13 A. Ian had sent me an e-mail and said that she wanted to see
14 me. And so it was a sales meeting day that I was on property
15 and she I think may have been in that sales meeting, I don't
16 exactly remember, but she did say I -- you know, I -- can I see
17 you after this, or I will see you after this, or something
18 where I didn't have a choice kind of thing, which was fine, I
19 was there. So that is when we spoke, after that sales meeting
20 on a Thursday.

21 Q. Okay. And did you go into her meeting?

22 A. I went into her -- I went to her office. She was with
23 somebody at the time and, you know, yelled over to me, I'll be
24 with you shortly, and actually Dan Toolan heard that because he
25 was -- he is another sales rep and who was in the area, and he

—Tourangeau - Direct Examination/Quinlan—

1 just said, wow, what did you do to her like, you know, it was
2 sort of like a firm I will see you in a little bit, you know,
3 kind of thing, so.

4 Q. Okay. What did the two of you discuss in the meeting when
5 you went in?

6 A. So I went in to the office and she asked me about some
7 damage to the side of my van on the back passenger side door.

8 Q. And what -- what was the damage?

9 A. Yeah, there was a -- a dent -- I think a smallish dent in
10 the side that had occurred the winter before so, and this was
11 in I think -- this was in the winter, I think Decemberish or
12 something, so it had to -- it was during the winter -- the
13 following winter I was out at an account in Eliot and it was
14 snowing terribly, like I don't think I should have even been on
15 the road. It was like towards the end of the day, and there
16 were no other cars in the parking lot, and I like backed into
17 the parking spot and I heard like a bump or I heard something,
18 so I parked and I got out and I went -- I looked around and
19 there was snow everywhere so I didn't see anything. There were
20 no people there, there was no accident, you know, so I didn't
21 really think much of it, I got home, went about my business.
22 Shortly weeks or month or -- after my husband actually said to
23 me one day in our driveway, what happened to your car here, so
24 he had noticed, and I said I don't know, what, and so I looked,
25 and then I thought about it and said oh, geez, that must have

—Tourangeau - Direct Examination/Quinlan—

1 happened, you know, when that happened, so that was the dent in
2 which she was referring to.

3 Q. And did you explain that to her?

4 A. Yes.

5 Q. What did she ask you about the damage to your car?

6 A. Well, she was upset that I -- she asked me why didn't you
7 report this so it could be fixed or why didn't you report this
8 and --

9 Q. And what did you tell her?

10 A. I told her -- you know, I apologized right away and I just
11 said honestly, Christine, I just didn't think of it, it -- I
12 told her how it had happened the year before, how I hadn't even
13 noticed it and my husband pointed it out but then when I looked
14 at it, yes, there was definitely a dent. And I -- I don't like
15 to damage property, so I wasn't happy about the dent, but the
16 car was drivable -- you know, there wasn't an accident, it
17 wasn't like I had to report an accident, I just didn't think to
18 do it, and, you know, I'm sorry that I didn't.

19 Q. Were you --

20 A. Because I was sorry.

21 Q. Were you intentionally trying to hide the dent?

22 A. No.

23 Q. Okay. And after you explained this to her and said that
24 you were sorry, what did she say to you?

25 A. Well, she -- just it was the look, the glaring at me again

—Tourangeau - Direct Examination/Quinlan—

1 from across the desk, and just wouldn't accept my apology,
2 wouldn't, and just told me she didn't believe I was sorry, you
3 know, why would I do this, why wouldn't I report it, and just
4 kind of kept asking me the same questions. I just kept saying
5 I'm sorry, I didn't intend to make you upset or to -- to hurt
6 anybody, I'm sorry.

7 And then she brought up how at a time previously Ian had
8 said something to me after a sales meeting about the condition
9 of the inside of my work van. That Nick had -- Nick Nappi had
10 come to talk to him and told him that he had heard it was like
11 dirty or dirty meaning just stuff in there and -- just dirty
12 was the word they used, so Ian mentioned that to me, and I
13 remember being horrified and so embarrassed, and it was, you
14 know, right after I had had the baby and so I was just like,
15 oh, my God, sleep deprived and I was so embarrassed because,
16 you know, all I -- like as a sales rep I live in that car, I
17 live in it. You know, I don't go eat lunch places. I eat my
18 Cheerios, you know, out of the cup. I have my trail mix.

19 Q. So your car did get a little messy, is that --

20 A. Yeah, it does, and I admit that, and from others I've seen
21 it -- it does, but I have never had a pet in there, I have
22 never had my child in there. Like, you know, I haven't -- it
23 would -- yeah, it was -- so, yes. So she brought that up to me
24 to say well then we had that episode with you that happened
25 then, you know, and so I'm thinking that's kind of old news, I

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1 already apologized for that. I had the car detailed almost
2 like the following week, you know, it was spotless.

3 Q. The year prior you had the car detailed?

4 A. My work van, yes. No, I brought it somewhere and paid to
5 have it detailed so it was like spotless, and I mean I was
6 totally embarrassed, I felt like an idiot. So she had brought
7 that up. So then she -- she said you had throw up in your car,
8 and that I was -- I did not have throw up in my car, I
9 definitely didn't. And I realized she had to be talking about
10 the smoothie that had spilt which was a like chocolate oat
11 smoothie I get from this place in Kittery, and I remember the
12 day it tipped over in the car and I was like, oh, bad word, and
13 in my glove box there were napkins there, wiped up the best I
14 could, threw it away. You know, I just -- and it was on the
15 side of the seat so it had -- like there was some left that had
16 stuck to the seat, and that is one of the things that Nick had
17 noticed. I believe that's what Ian had said to me, that it was
18 just dirty and something was spilled, but never was throw up
19 mentioned to me because I would have said no way.

20 Q. So when we talk about the smoothie or the what Christine
21 said was the vomit, she is talking about something that
22 happened a year prior?

23 A. Well, it happened, yeah. I don't know how long before it,
24 but it had happened and been addressed, dealt with. It was old
25 news kind of thing as far as I could tell, so I didn't know why

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1 she was bringing that up. And then said I had throw up in my
2 car, I was shocked, I said absolutely did not. She called the
3 garage, you know, to -- and asked for somebody, I think Walter
4 in there, and asked if he remembered the time I had brought my
5 car in and did I have throw up in my car, and I -- and he was
6 on speaker so I heard the conversation, and I don't know if he
7 said what -- I don't think he said he thought it was throw up,
8 but he acknowledged it, but it was just strange that she was
9 bringing it up and questioning that and like trying to prove
10 that I had throw up in my car by calling somebody when I did
11 not, and I was horrified by that, so it was just very
12 uncomfortable.

13 And during this -- this whole time this was right after a
14 sales meeting, which is at 7:00 a.m., usually they last a
15 couple of hours. Thursday is one of my busiest days of the
16 week, my routes, my accounts are all down south. So it's just
17 about an hour to the warehouse where the meetings are and I'm
18 going -- I'm thinking in my head I need to get out of here, I
19 have to go do my job. This is -- this is feeling really crazy,
20 like she is berating me, I can't get her off my back.

21 So I was so upset and I just was like I started crying,
22 and then she stopped and just looked at me and said that I was
23 passive aggressive because I was crying, I think, I don't know
24 why she said I was passive aggressive, but -- so that happened.

25 And then she said I don't think you're sorry, I just don't

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1 think you're sorry, and I just didn't know what to do. And I'm
2 like this woman is not going to let me out of here until she
3 breaks me, so I let her break me and I started crying. And
4 then she told me I should probably see a doctor and get my
5 medications checked because my hormones must be out of whack,
6 and I'm thinking I don't know, I know I just had a baby and
7 everything, so -- but this reaction, if -- if there was a fly
8 on the wall watching this happening, I can't imagine anyone who
9 would have thought my reaction was not appropriate.

10 Q. And by your reaction you mean the crying?

11 A. The crying.

12 Q. Okay.

13 A. I was just broken. I just couldn't do it anymore.

14 Q. Okay. And did you leave after she made these comments to
15 you?

16 A. I did.

17 Q. What did -- did you report this interaction with --

18 A. I got in my car and I drove south because I needed to get,
19 and I thought about it the whole time, and as soon as I like
20 parked I had to -- I was late for a meeting with a customer,
21 ran in, did that, came back out, and I sent a text message to
22 Ian Brown and just said, hey, I think -- and Joline might have
23 been on it as well, I don't remember, but I said are you -- are
24 you and Joline free available tomorrow morning, there is
25 something I would like to come talk to you about, and he said

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1 how is 9:00 a.m., and I said perfect.

2 Q. Okay. And I will show you what I have marked as
3 Exhibit 39. Is this the text message you were just telling me
4 about?

5 A. It is, it is to Ian and Joline.

6 MS. QUINLAN: Your Honor, I would like to admit
7 Exhibit 39.

8 THE COURT: Any objection?

9 MR. WALL: No objection, Your Honor.

10 THE COURT: It's admitted.

11 MS. QUINLAN: And if I could publish to the jury?

12 THE COURT: You may.

13 MS. QUINLAN: Thank you.

14 BY MS. QUINLAN:

15 Q. And so if we look here it looks like it was in fact a text
16 message to Ian and Joline that you sent asking them to meet the
17 following day on December 14, 2017.

18 A. Yes.

19 Q. Did you end up meeting with them the next day?

20 A. I did. I did. We met in Joline's office. That is not
21 her current office, it's the office where she used to be. They
22 were both there. Joline was sitting behind her desk, Ian and I
23 were at chairs in front of her desk. I told --

24 Q. Did --

25 A. -- them --

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1 Q. I was going to say, what did you tell them?

2 A. Right, I'm trying to go timing so I'm trying to do it --
3 no, no, so I told them that I had talked to Christine the day
4 before; and Ian said actually Christine did mention that, that
5 you had a meeting and that you were very upset; and I said well
6 did she tell you why I was upset; no, you know, we didn't get
7 into that. So I just said I -- I summarized what had happened
8 to Ian and Joline, and I told them that, you know, it was
9 shocking to me, and that I've had several professional
10 positions in my life at different companies, have worked with
11 several different HR human resource professionals, and I was
12 shocked at the way she treated me and spoke to me. It was just
13 -- I don't even know what to say other than shocking and
14 appalling. And so I let them know --

15 Q. Did you tell them about the comment that she made about
16 your needing to get your medications checked?

17 A. Yes, I told them -- just I summarized exactly what I just
18 summarized for you all here.

19 Q. And how did they react to it?

20 A. Well, Ian had -- he was taking notes. I mean the look
21 that -- the look on his face was of like shock but also
22 sympathy or -- I mean he said, you know, I'm really sorry you
23 had to deal with that, or I'm sorry that happened to you is
24 what I think he said. He asked me if I wanted to go see Frank,
25 Jr. -- Frank Nappi, Jr., about it, did he want me to -- did I

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1 want him to bring it to Frank, and I said honestly, no, I
2 don't -- you know, Christine -- see Christine -- human
3 resources of direct -- director of human resources but also
4 has -- and that is a powerful position, but the position -- I
5 mean she -- Frank -- she is number -- his next in line pretty
6 much, so she holds a lot of power, and being in the even office
7 with her I mean I was intimidated -- intimidated, annoyed,
8 scared, all of those things, but I'm thinking she is freaking
9 out on me right now and she has the power to fire me, that's
10 what I was thinking. So I said, you know, honestly, no, I
11 don't need you to bring it to anyone. I wanted someone to be
12 aware of it, just know what you're dealing with here with her.
13 I don't know what's going on, I just want it documented in my
14 file, I really prefer not to have any more one-on-one meetings
15 with her.

16 Q. Did Ian ask you any questions?

17 A. Well, yeah. So then at some point he said if I -- he
18 asked me if I thought this treatment was because of what had
19 transpired between us during my maternity leave about the
20 incentive situation. And, you know, I hadn't really thought
21 about that 24 hours before but I said, you know what, could be,
22 honestly it really could be, so that was that.

23 Q. Did Joline --

24 A. I --

25 Q. Sorry, did Joline say anything to you or interact with

—Tourangeau - Direct Examination/Quinlan—

1 you?

2 A. Just -- just -- yeah. I mean she didn't really
3 participate as much, she was listening. But when I said no, I
4 don't want it brought to Frank, I don't want to make a thing of
5 it, honestly I prefer to fly under the radar, do my job, do my
6 thing, and I don't want to cause trouble, and Joline said you
7 know I'm the same way, I like to fly under the radar, too. I
8 remember her saying that. But other than that she -- she
9 didn't really say too much, she was just there as another set
10 of ears.

11 Q. Was there a reason why you wanted them, as you said, to
12 make a note of it to your file?

13 A. Well, I -- I'm a -- I have been in business long enough to
14 know I mean it's good to have things documented like that
15 because I don't know what could have -- what else could have
16 happened in the future or. And that was -- that was not a
17 normal occurrence in a professional situation or a professional
18 job, that was not normal, so it needed to, you know, be
19 acknowledged as that.

20 THE COURT: Is this a good time to break?

21 MS. QUINLAN: Sure, yep.

22 THE COURT: All right. Why don't you -- by the way,
23 I'm going to admit over objection Plaintiff's 35. I'm
24 admitting over objection Plaintiff's 35.

25 MR. WALL: Thank you, Your Honor.

—Tourangeau - Direct Examination/Quinlan—

1 THE COURT: Why don't you stand down, ma'am.

2 So, ladies and gentlemen, I've got some words of advice
3 for you. First, I understand that old man winter has decided
4 to make his appearance in February. He has not darkened our
5 door very much this year, but he is here, and we have no choice
6 but to let him in.

7 Now, you're all hardy Mainers, so I assume you can -- you
8 know how to drive through snow. Do you have your -- can you
9 hear me?

10 JUROR: I'm all set.

11 THE COURT: Okay. I'm still a little worried about
12 the travel conditions tomorrow morning, so what I'm going to do
13 is ask you to come at nine and not 8:30, that will give you a
14 little more daylight to travel in. So be here by 9:00 and
15 we'll start at 9:00.

16 One of the unique things about a jury is that we can't
17 all -- we can't start until all of you are here, and you don't
18 want to be the one we're looking for. So just try -- you made
19 an effort today and I appreciate the effort, try and be here in
20 advance of 9:00 so we can start on time.

21 Secondly, I have a feeling what's going to happen when you
22 get home tonight and someone may well greet you and they'll
23 say, what happened in court today? I'm all ears, tell me all
24 about it. I'm so interested. What do you think? And you're
25 going to say, I can't talk about it.

—Tourangeau - Direct Examination/Quinlan—

1 Now, the reason I'm telling you that is not to test your
2 self-restraint. It is because when you start talking about the
3 case you're deliberating, and you can't deliberate about this
4 case with anyone other than a member of the jury. So you have
5 to tell them I can't talk about it, and if you start to talk
6 about it you're violating my instructions. If they pester, if
7 they won't take no for an answer, tell them to give me a call,
8 I'll be glad to talk to them about it.

9 The second thing that I want to tell you about is this,
10 I've told you in the earlier instructions that you can't do any
11 research, and I'm -- I'm going to reinforce that now. Juries
12 all over the country are given the same instruction that I just
13 gave you this morning, that you can't do any research, you
14 can't Google people, you can't go on Facebook and try and look
15 them up, and they're violating judge's instructions. They
16 ignore it because, I don't know, they're addicted to Facebook
17 or they can't ignore the internet for a period of time.

18 And there are two reasons you can't do it, and the first
19 is that you can get a lot of information and misinformation
20 from the internet, and we're going to a lot of trouble here in
21 court, as you've seen, to make certain with these lawyers that
22 the information you get to decide this case properly is based
23 on the rules of evidence. Well, the information you're getting
24 on Google is not based on the rules of evidence.

25 And the other reason that you can't do it is because the

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1 attorneys have to know what you know about the case in order to
2 frame their arguments and to make appropriate closing arguments
3 to you and to adjust the evidence that is properly before you,
4 and if they don't know what you know they're going to be at a
5 disadvantage.

6 So I'm urging you in the strongest terms not to do what
7 some other juries -- jurors have done around the country, and
8 when they do it causes terrible trouble with the trial, not to
9 go on the internet, not to do any research, stay out of social
10 media, don't talk about your role on Facebook or some other
11 social media on this case.

12 After the trial is over, you're not constrained at all,
13 you can do whatever you want to do; but while the trial is
14 going on, you have to obey my instructions on this.

15 With those admonitions, I'm going to tell you that you can
16 leave and have safe travels here tomorrow and I'll look forward
17 to seeing you tomorrow morning.

18 THE CLERK: All rise, jury exiting.

19 (Jury exited. Time noted: 2:46 p.m.)

20 THE COURT: Anything before we break?

21 MS. QUINLAN: No, Your Honor.

22 MR. WALL: No, Your Honor.

23 THE COURT: Okay. Court will stand in recess.

24 (Time noted: 2:46 p.m.)
25

Tourangeau - Direct Examination/Quinlan

C E R T I F I C A T I O N

I, Tammy L. Martell, Registered Merit Reporter, Certified Realtime Reporter, and Official Court Reporter for the United States District Court, District of Maine, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Dated: March 28, 2023

/s/ Tammy L. Martell

Official Court Reporter